No. 12770

United States
Court of Appeals
for the Ninth Circuit.

ETTORE G. STECCONE, an Individual Doing Business Under the Firm Name and Style of STECCONE PRODUCTS CO.,

Appellant,

vs.

MORSE-STARRETT PRODUCTS CO., a Corporation,

Appellee.

Transcript of Record

**Appeal from the United States District Court,
Northern District of California,
Southern Division.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California.

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San Francisco, California.

Attorneys for Plaintiff and Appellee.

In The District Court of the United States for the Northern District of California, Southern Division

No. 27081-E

MORSE-STARRETT PRODUCTS CO., a Corporation,

Plaintiff,

vs.

ETTORE G. STECCONE, an Individual Doing Business Under the Firm Name and Style of Steccone Products Co.,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 52 of the Federal Rules of Civil Procedure and Rule 5 (e) of the Rules of Practice of the District Court of the United States for the Northern District of California, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

That plaintiff, Morse-Starrett Products Co., is a corporation duly organized and existing under and by virtue of the laws of the State of California, and has a place of business in the City of Oakland, County of Alameda, State of California.

II.

That defendant Ettore G. Steccone, is an indi-

vidual and a resident of the City of Oakland, County of Alameda, State of California.

III.

That plaintiff adopted the trade-name "Steccone" for squeegees early in the year 1939 and applied said trade-name enclosed by an oval to its goods in interstate commerce at that time.

IV.

That plaintiff's adoption and use of the trade-name "Steccone" was with the full knowledge and approval of defendant and was without any objection by the defendant.

V.

That defendant knew or should have known from November, 1940, that plaintiff was expending considerable sums of money in making, selling and advertising its article as the "Steccone" squeegee.

VI.

That defendant knew at various times that plaintiff was taking steps to prevent defendant from making, selling and advertising a squeegee as the "Steccone" squeegee.

VII.

That despite such knowledge on the part of the defendant, defendant allowed plaintiff to continue to make and push the sale of squeegees at considerable cost and expense and until October 16, 1942, defendant said nothing.

VIII.

That defendant by failing to seasonably object to plaintiff's adoption and continued use of the trade-name "Steccone" is estopped to deny that plaintiff is the owner of the trade-name "Steccone" enclosed in an oval as applied to squeegees and is entitled to the exclusive use thereof as against this defendant.

IX.

That defendant secured United States Letters Patent No. 2,123,638, dated July 12, 1938, for a squeegee, and defendant granted to plaintiff a license to manufacture and sell squeegees under said United States Letters Patent No. 2,123,638, said license being evidenced by two agreements dated November 21, 1938, and December 3, 1938, respectively.

X.

That defendant, upon the execution of said license agreements with plaintiff, turned over to the plaintiff at cost, less depreciation, his dies, tools, materials and equipment used by defendant in the manufacture of said squeegees, and gave to plaintiff his customer list and thereafter retired from the business of manufacturing and selling squeegees.

XI.

That defendant never used the trade-name "Steccone," enclosed in an oval or in any form, on squeegees, or in any trade-name or trade-mark sense, or prior to its use as a trade-name by plaintiff, prior to the license agreements with plaintiff.

XII.

That defendant, prior to the license agreements with plaintiff, had marked and sold his squeegees under the trade-name "New Deal."

XIII.

That plaintiff, since the early part of 1939, applied its trade-name "Steccone" enclosed by an oval to squeegee handles and squeegee rubbers, and manufactured and continuously sold said squeegees so marked in interstate commerce over the entire United States.

XIV.

That shortly after the execution of the license agreements between plaintiff and defendant said Letters Patent No. 2,123,638 were infringed, and suit was brought against said infringer in the name of plaintiff; and on October 31, 1940, the Circuit Court of Appeals for the Seventh Circuit, in the case of Morse-Starrett Products Co. et al., vs. Standard American Window Safety Co. et al., 115 F. (2d) 574, held said patent invalid for lack of novelty and for anticipation.

XV.

That on November 13, 1940, plaintiff, pursuant to the terms of the license agreements with defendant, cancelled its license and defendant made no objection to said cancellation.

XVI.

That after the cancellation of said license agreements on November 13, 1940, plaintiff continued its

manufacture and sale of said squeegees under the trade-name "Steccone" without objection from defendant until October 16, 1942, when defendant caused a letter to be sent to plaintiff objecting to plaintiff's use of the trade-name "Steccone" on said squeegees.

XVII.

That plaintiff advised defendant that it would not cease its use of its trade-name "Steccone" for squeegees, and thereafter continued its manufacture and sale of squeegees under the trade-name "Steccone" enclosed by an oval.

XVIII.

That subsequent to the letter of October 16, 1942, defendant did nothing in the way of affirmative action until his cross-complaint was filed in May, 1947.

XIX.

That defendant excuses the seven-year delay in taking any affirmative legal action on two grounds: (1) he didn't even write a protest letter until October, 1942, because he thought it fair to let plaintiff get rid of its stock on hand; and (2) that from 1942 until 1945, because of the war effort, there was no rubber available satisfactory to him, so he made no attempt to go into the business of manufacturing these particular squeegees. No explanation is given for the delay between 1945 and 1947 except the fact that Goodrich, in compliance with plaintiff's demands, refused to make and mark the rubbers defendant desired.

XX.

That in 1945 defendant again embarked in the manufacture and sale of squeegees and sold them under the trade-name "Steccone."

XXI.

That defendant attempted to have his squeegee rubbers for the squeegees he manufactured in 1945 marked with the trade-name "Steccone," and plaintiff notified the manufacturers of said rubbers that they were the owners of Certificate of Registration No. 371,776 of the trade-mark "Steccone" for squeegees and requested said manufacturers to respect plaintiff's rights thereto.

XXII.

That plaintiff notified a direct mail advertiser, who was advertising defendant's squeegees under the trade-name "Steccone," that it owned United States Certificate of Registration No. 371,776, and requested said advertiser to respect plaintiff's rights thereto.

XXIII.

That plaintiff expended considerable sums of money in making, selling and advertising its "Steccone" squeegees.

XXIV.

That plaintiff's "Steccone" squeegee and the trade-name "Steccone" enclosed by an oval have been very widely advertised and promoted by plaintiff throughout the United States from the year 1939 to the present, and such advertising and pro-

motion cost in excess of Eighteen Thousand Dollars ($18,000.00).

XXV.

That plaintiff has developed a nationwide market for its squeegees under the trade-name "Steccone" and has developed a considerable and valuable goodwill in the business of manufacturing and selling squeegees under said trade-name.

XXVI.

That plaintiff is the owner of all of the right, title and interest in and to the trade-name "Steccone" enclosed by an oval and that plaintiff registered the trade-name "Steccone" enclosed by an oval for squeegees in the United States Patent Office, said registrations being No. 371,776, dated October 3, 1939, issued pursuant to the provisions of the Trade-Mark Act of February 20, 1905, and No. 502,662, dated October 5, 1948, issued pursuant to the provisions of the Trade-Mark Act of July 5, 1946.

XXVII.

That plaintiff's trade-name "Steccone" has acquired a secondary meaning in the trade identifying squeegees manufactured and sold by plaintiff and plaintiff's alone.

XXVIII.

That from February, 1939, to March 31, 1949, the sales of plaintiff in its said squeegees trade-named "Steccone" amounted to in excess of Two Hundred Fifty Thousand Dollars ($250,000.00).

XXIX.

That the plaintiff is the prior user of its trade-name "Steccone" as far as this defendant is concerned.

XXX.

That the trade-name "Steccone" as used by plaintiff identifies the product in the mind of the public as that of this particular plaintiff.

XXXI.

That the use of the trade-name "Steccone," by defendant, has caused confusion in the trade, and there is great likelihood that defendant's product will be passed off as that of plaintiff.

XXXII.

That the use of the trade-name "Steccone" by defendant will deceive buyers into believing defendant's goods are the goods of plaintiff and had their origin with defendant.

XXXIII.

That the notices sent by plaintiff to rubber manufacturers were sent in good faith and for the purpose of properly notifying said rubber manufacturers of plaintiff's ownership in and to the trade-name "Steccone."

XXXIV.

That plaintiff's notification of a direct mail advertiser employed by defendant advising said advertiser of plaintiff's right in and to the trade-name "Steccone" was done in good faith and for

the purpose of properly notifying said advertiser of plaintiff's ownership in and to the trade-name "Steccone."

XXXV.

That the reports made to defendant by plaintiff pursuant to said license agreements were true and accurate reports and were not falsely or fraudulently made by plaintiff to defendant and did not fraudulently conceal the true extent of plaintiff's sales of squeegees under the license agreements between plaintiff and defendant.

XXXVI.

That the evidence establishes that plaintiff did not unfairly compete with or infringe upon any rights of defendant.

Conclusions of Law

I.

That plaintiff is the owner of the trade-name "Steccone" enclosed by an oval as applied to squeegees and squeegee rubbers and is entitled to the exclusive use thereof as against this defendant.

II.

That as between the parties to this action the plaintiff is the owner of Trade-Mark Registration No. 371,776, dated October 3, 1939.

III.

That as between the parties to this action the plaintiff is the owner of Trade-Mark Registration No. 502,662, dated October 5, 1948.

IV.

That this Court has jurisdiction of this cause.

V.

That plaintiff's trade-name "Steccone" has acquired a secondary meaning in the trade identifying squeegees manufactured and sold by plaintiff as the products of plaintiff.

VI.

That the defendant, by manufacturing, advertising and selling his squeegees under the trade-name "Steccone," has unfairly competed with the plaintiff.

VII.

That the defendant, by using the trade-name "Steccone" on squeegees, is likely to cause confusion in the trade between plaintiff's squeegees and defendant's squeegees.

VIII.

That plaintiff is entitled to a judgment against defendant awarding plaintiff an injunction to be issued out of and under the seal of this Court enjoining defendant from using the trade-name "Steccone" on all squeegees, or the handles thereof, made and sold by him, and from so using his name that reasonably attentive purchasers cannot readily distinguish between the products of plaintiff and defendant, provided, however, that defendant may make, advertise and sell squeegees as the product of the Steccone Products Co., or his product, so long as the name "Steccone," used alone or in con-

junction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff.

IX.

That the notices sent by plaintiff to rubber manufacturers, from whom defendant was purchasing rubbers, were sent in good faith and were lawfully sent by plaintiff to protect its rights.

X.

That plaintiff's notification of a direct mail advertiser employed by defendant advising said advertiser of plaintiff's right in and to the trade-name "Steccone" enclosed by an oval was done in good faith and for the purpose of properly notifying said advertiser of plaintiff's ownership in and to the trade-name "Steccone" enclosed by an oval.

XI.

That the plaintiff has not unfairly competed with the defendant.

XII.

That the plaintiff has not infringed upon any trade-mark or other rights of defendant.

XIII.

That plaintiff waives its claim for damages against defendant.

XIV.

That defendant proved no damages against plaintiff.

XV.

That plaintiff is entitled to a judgment against defendant for its costs of suit.

XVI.

That plaintiff is entitled to a judgment dismissing the cross-complaint herein.

Dated: January 11, 1950.

/s/ HUBERT W. ERSKINE,
United States District Judge.

[Endorsed]: Filed January 11, 1950.

In the District Court of the United States for the Northern District of California, Southern Division

No. 27081-E

MORSE-STARRETT PRODUCTS CO., a Corporation,

Plaintiff,

vs.

ETTORE G. STECCONE, an Individual, Doing Business Under the Firm Name and Style of STECCONE PRODUCTS CO.,

Defendant.

JUDGMENT

This cause having come on to be heard upon the issues raised by the Complaint, Answer and Cross-

Complaint, and Answer to Cross-Complaint, and the Court having filed its Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed:

I.

That plaintiff Morse-Starrett Products Co. is a corporation duly organized and existing under and by virtue of the laws of the State of California, and has a place of business in the City of Oakland, County of Alameda, State of California.

II.

That defendant, Ettore G. Steccone, is an individual and a resident of the City of Oakland, County of Alameda, State of California.

III.

That this Court has jurisdiction of this cause and of the parties.

IV.

That plaintiff is the owner of the trade-name "Steccone" enclosed by an oval and is entitled to the exclusive use thereof for squeegees as between the parties to this action.

V.

That as between the parties to this action, the plaintiff is the owner of the legal title to United States Trade-Mark Registration Nos. 371,776, dated October 3, 1949, and 502,662, dated October 5, 1948.

VI.

That plaintiff's trade-name "Steccone" has ac-

quired a secondary meaning as solely identifying the products of plaintiff and plaintiff's products alone.

VII.

That defendant has unfairly competed with plaintiff.

VIII.

That plaintiff has not unfairly competed with defendant.

IX.

That plaintiff has not infringed upon any trademark rights of defendant.

X.

That defendant proved no damages against plaintiff.

XI.

That the cross-complaint herein be and the same is hereby dismissed.

XII.

That plaintiff waived its claim for damages against defendant.

XIII.

That a writ of injunction issue out of and under the seal of this Court enjoining and restraining the defendant, his associates, attorneys, employees, servants, agents, and those in privity with him, or them, from in any manner using the trade-name "Steccone" enclosed by an oval in connection with squeegees, or the handles thereof, and from so using the name "Steccone" that reasonably attentive purchasers cannot readily distinguish between the prod-

ucts of plaintiff and defendant, provided, however, that defendant may make, advertise and sell squeegees as the products of the Steccone Products Co., or as defendant's product, so long as the name "Steccone," used alone or in conjunction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff.

XIV.

That plaintiff recover from defendant its costs and disbursements in this suit in the sum of $..... and have execution therefor.

Dated: January 11th, 1950.

/s/ HERBERT W. ERSKINE,
United States District Judge.

[Endorsed]: Filed Jan. 11, 1950.

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE

To the Honorable Judge Erskine of the District Court of the United States for the Northern District of California, Southern Division:

Morse-Starrett Products Co., your petitioner, respectfully shows:

I.

Petitioner is the plaintiff in the above-entitled action.

II.

That on or about October 25, 1949, this Honorable Court rendered an opinion in the above-entitled action; said opinion having been entered as an Order in these proceedings by the Clerk of this Court on the 25th day of October, 1949.

That a copy of said opinion and Order was received by mail by the attorney for defendant on or about October 26, 1949; that said opinion and Order contains the following provisions:

That in marking and selling squeegees under the trade-mark "Steccone" defendant is guilty of unfair competition.

That plaintiff is entitled to relief from and protection against such unfair competition.

That defendant should be enjoined from using the trade-mark "Steccone" on all squeegees, or the handles thereof, made and sold by him; and from so using his name that reasonably attentive purchasers cannot readily distinguish between the products of plaintiff and defendant; provided, however, that he may make, advertise, and sell squeegees as the product of the Steccone Products Company, or as his product so long as the name "Steccone," used alone or in conjunction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material

so as to clearly differentiate it from the product manufactured and sold by plaintiff.

J. F. Rowley Co. v. Rowley,
18 F. (2d) 700;
Chickering v. Chickering & Sons,
215 Fed. 490;
Bates Mfg. Co. v. Bates Numbering Mach. Co.,
172 Fed. 892;
J. A. Dougherty's Sons v. Dougherty,
36 F. Supp. 149;
Dodge Stationery Co. v. Dodge,
145 Cal. 380.

III.

That there is published monthly and circulated throughout the window cleaning and maintenance industry a national magazine for window cleaning and maintenance companies entitled "The Window Cleaner."

That the December issue of said magazine was received by petitioner on or about December 27, 1949, and the same contained an advertising insert, a copy of which is attached hereto, made a part hereof, and marked Exhibit 1.

That petitioner is informed and believes and on information and belief alleges that Sterling Sanitary Supply Corporation is a distributor and agent of defendant and that the material for making up said insert was furnished to said Sterling Sanitary Supply Corporation by defendant herein subsequent to the entry and issuance of this Court's said order.

That the use of the trade-mark "Steccone" identifying the squeegees advertised by said insert as

"Steccone's Master Squeegee" is in violation of this Court's Order.

That the statement:

> "Be sure you buy the Genuine Steccone's Master Squeegee manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name."

is improper and in violation of this Court's Order.

That the statement:

> "Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than six years with the firm that arbitrarily uses the name Steccone."

is improper and in violation of this Court's Order of October 25, 1949.

That the publication or authorizing for publication by defendant, through defendant's agent, Sterling Sanitary Supply Corporation, of said insert, Exhibit 1, is in direct violation of this Court's Order of October 25, 1949.

IV.

That a judgment was entered herein on January 11, 1950, and, among other things, provided that a writ of injunction issue out of and under the seal of this Court enjoining and restraining the defendant, his associates, attorneys, employees, servants, agents, and those in privity with him, or them, from in any manner using the trade-name "Steccone" enclosed by an oval in connection with squeegees

or the handles thereof, and from so using the name "Steccone" that reasonably attentive purchasers cannot readily distinguish between the products of plaintiff and defendant, provided, however, that defendant may make, advertise and sell squeegees as the products of the Steccone Products Co., or as defendant's products, so long as the name "Steccone," used alone or in conjunction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff.

V.

That thereafter and on or about April 11, 1950, defendant caused to be published and circulated among the window cleaning industry of the United States an advertising pamphlet, copy of which is attached hereto, made a part hereof and marked Exhibit 2.

VI.

That said advertising circular, Exhibit 2, employs the names "Steccone" and "Steccone Products Co." unaccompanied with any explanatory material so as to clearly distinguish the products there advertised from the products manufactured and sold by plaintiff, all in violation of this Court's judgment.

VII.

That there appears on the inside of said pamphlet in fine print the following:

"Ettore Steccone, who was granted Patent No. 2,123,638* on July 12, 1938, for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this patent, but has canceled its license and continues to sell squeegees marked: Steccone."

---

*Held invalid in Morse-Starrett Products Co. v. Standard American Window Safety Device Co. 115 F. (2d) 574.

VIII.

That said legend embodies an improper use of plaintiff's trade-mark "Steccone" and infers that plaintiff has no right to manufacture and sell squeegees under its trade-mark "Steccone." That by the use of said legend on said Exhibit 2 defendant has violated the judgment of this Court and is guilty of trade-mark infringement and unfair competition as against plaintiff herein.

IX.

That defendant also on or about April 11, 1950, caused to be published and circulated among the window cleaning industry of the United States an advertising circular, copy of which is attached hereto, made a part hereof and marked Exhibit 3.

X.

That said advertising circular, Exhibit 3, employs the names "Steccone" and "Steccone Products Co." unaccompanied with any explanatory material so as to clearly distinguish the products there adver-

tised from the products manufactured and sold by plaintiff, all in violation of this Court's judgment.

XI.

That there appears on said circular, Exhibit 3, in fine print the following legend:

> "Ettore Steccone, who was granted Patent No. 2,123,638* on July 12, 1938, for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this patent, but has canceled its license and continues to sell squeegees marked: Steccone."

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*Held invalid in Morse-Starrett Products Co. v. Standard American Window Safety Device Co. 115 F. (2d) 574.

XII.

That said legend embodies an improper use of plaintiff's trade-mark "Steccone" and infers that plaintiff has no right to manufacture and sell squeegees under its trade-mark "Steccone." That by the use of said legend on said Exhibit 3 defendant has violated the judgment of this Court and is guilty of trade-mark infringement and unfair competition as against plaintiff herein.

XIII.

That defendant also on or about April 11, 1950, caused to be published and circulated among the window cleaning industry of the United States an advertising circular, copy of which is attached hereto, made a part hereof and marked Exhibit 4.

XIV.

That said advertising circular, Exhibit 4, employs the name "Steccone Products Co." unaccompanied with any explanatory material so as to clearly distinguish the products there advertised from the products manufactured and sold by plaintiff, all in violation of this Court's judgment.

XV.

That the said trade publication, "The Window Cleaner" for March-April, 1950, copy of which is attached hereto, made a part hereof and marked Exhibit 5, includes advertising by defendant's distributor and agent, Sterling Sanitary Supply Corporation.

That upon information and belief the petitioner is informed and believes that the material for making up said advertisement was furnished to said Sterling Sanitary Supply Corporation by defendant herein subsequent to the entry of said judgment.

That the said advertisement includes the trademark "Steccone's Master Squeegee" and that there is no explanation made in said advertisement so that reasonable attentive purchasers could distinguish between the products of defendant sold by its distributor and agent, Sterling Sanitary Supply Corporation, and the products of the plaintiff herein, all in violation of this Court's judgment.

XVI.

That two other advertisements appear in said trade publication, "The Window Cleaner" adver-

tising the sale of genuine "Steccone" rubbers; one on behalf of Formula Products, Inc., 103 Elizabeth Avenue, Newark, N. J., and another on behalf of Pearl Bros., 600 Capouse Avenue, Scranton, Penna.

That plaintiff is informed and believes and on said information and belief alleges that said advertisements refer to defendant's products.

XVII.

That said advertising circulars, Exhibits 2 and 3, disclose the identical use of the name "Steccone" on defendant's squeegee handle which was originally charged in the complaint to constitute unfair competition by the defendant and which this Court held to be unfair competition in its opinion and judgment. That the said continued use of the name "Steccone" by defendant on his squeegee handles is in violation of this Court's judgment and constitutes unfair competition by defendant against plaintiff.

XVIII.

That said acts of defendant have caused and will continue to cause great and irreparable injury and damage to plaintiff.

Wherefore, petitioner prays:

1. That defendant be required to show cause why he should not be attached for contempt and adjudged by this Court to be in contempt of its Order and judgment in this cause and be punished for the same.

2. That defendant be ordered to deliver up to

this Court for destruction all advertising inserts, the same as or similar to Exhibits 1, 2, 3, 4 and 5, attached hereto, and all plates or other material for making same now in defendant's possession or under his control or in the possession of or under the control of defendant's distributors and agents.

3. That this Court enter a further order enjoining defendant from use of the name "Steccone" in any manner whatever in connection with squeegees and parts therefor.

4. That this Court direct the defendant to instruct, in writing, his agents and distributors from in any manner using the name "Steccone" in connection with the advertisements and sales of squeegees and parts therefor.

5. That defendant be required to pay punitive damages to plaintiff in the amount of One Thousand Dollars ($1,000.00), reasonable attorneys' fees in the amount of Five Hundred Dollars ($500.00) and such other and further relief as the nature of this case may require.

MORSE-STARRETT
PRODUCTS CO.,

By /s/ LEON J. PAUL,
President.

State of California,
County of Alameda—ss.

Leon Paul, being duly sworn, deposes and says: That he is President of Morse-Starrett Products

Co., petitioner named in the foregoing petition, and that he has read the contents thereof and that the statements therein contained are true and correct except such matters as are therein stated on information and belief and as to such matters he believes them to be true.

/s/ LEON PAUL.

Subscribed and sworn to before me this 19th day of July, 1950.

[Seal] /s/ E. A. WARNESS,
Notary Public.

My commission expires May 13, 1953.

Exhibit No. 1

STECCONE'S MASTER SQUEEGEE

New

FOR PROFESSIONAL WINDOW CLEANERS

1 The rubber is inserted in the handle—no pushing—no pulling

2 Then brass clip is slipped on into position and it takes but a second.

3 Then rubber and brass clip are pushed into the channel. The rubber is held in positive position, cannot slip, and the rubber wears longer and performs better.

● Designed especially to do high quality work with speed and economy. A fine high quality tool made of special tempered brass that will stand hard usage and last for years.

STECCONE'S MASTER SQUEEGEE is made with a replaceable rubber held in place by a patented brass clip.

The finest and most complete squeegee ever offered to the trade.

THERE IS NO ECONOMICAL SUBSTITUTE FOR QUALITY

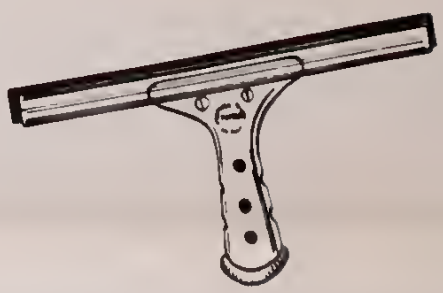
Sizes	COMPLETE PER DOZ WITH CLIPS	CHANNEL WITH RUBBER AND CLIP	RUBBERS PER GROSS	FREIGHT PREPAID ON 100 LB SHIPMENTS
18"	$18.00	$10.00	$23.00	JOBBERS WRITE FOR SPECIAL DISCOUNT IN LARGER QUANTITIES
16"	17.00	9.00	22.00	
14"	16.50	8.50	20.00	
12"	16.00	8.00	19.00	
10"	15.50	7.50	17.00	
8"	14.50	6.50	16.00	
6"	14.00	6.00	14.00	

BRASS HANDLES WITH LOCK RING $9.00 per dozen.

Be sure you buy the GENUINE STECCONE'S MASTER SQUEEGEE manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name.

Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than six years with the firm that arbitrarily uses the name Steccone

Manufactured by
STECCONE PRODUCTS CO.



SOLD BY

STERLING SANITARY SUPPLY CORP.

28 WEST HOUSTON STREET

NEW YORK 12, N. Y.

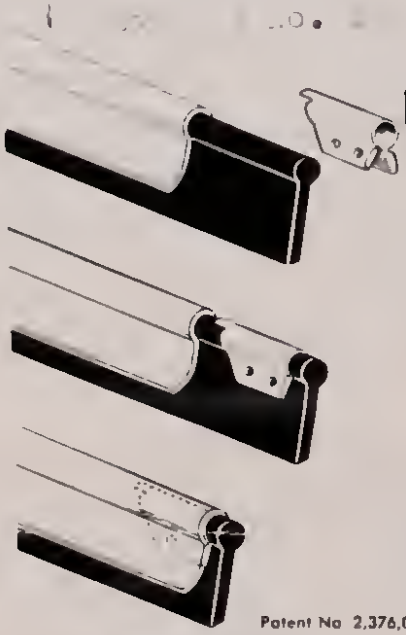
DETACH THE REPLY CARD AND MAIL YOUR ORDER TODAY

You'll Never Want Any Substitutes!

EXHIBIT 1

ETTORE STECCONE MASTER SQUEEGEE

ONLY THE MASTER HAS THE FOLLOWING ADVANTAGES AT NO EXTRA COST

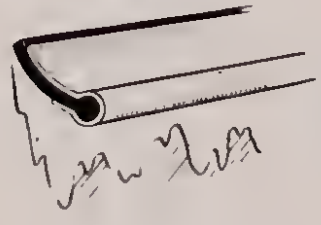


Potent No 2,376,098

1. The rubber is inserted into the channel — no pushing ar pulling.

2. Then brass clip is slipped on into position and it takes but a secand.

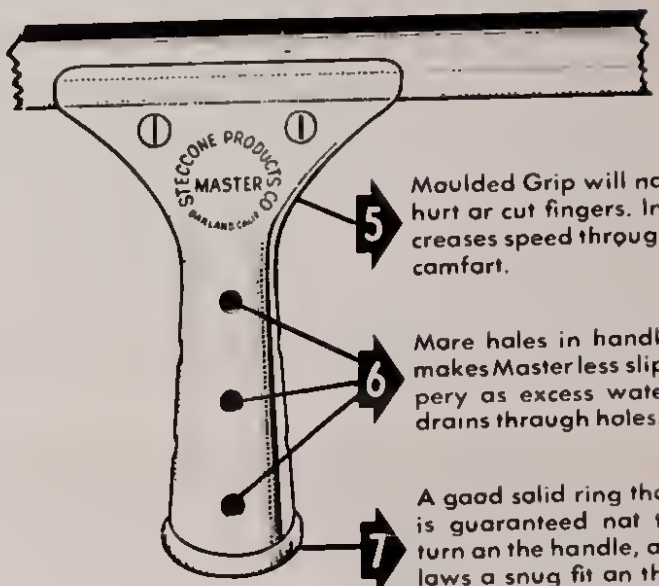
3. Then rubber and brass clip are pushed into the channel. The rubber is held in positive position, cannat slip, and the rubber wears langer and perfarms better.



4. Praperly curved channel gives rubber added spring, increasing its efficiency as the cleansing agent.

All features designed into the MASTER SQUEEGEE are aimed at greater efficiency and speed, providing higher wages with sharter haurs.

There is na ecanamical substitute for quality.



5. Moulded Grip will nat hurt ar cut fingers. Increases speed through camfart.

6. Mare hales in handle makes Master less slippery as excess water drains thraugh holes.

7. A gaad solid ring that is guaranteed nat to turn an the handle, allaws a snug fit an the pale.

Designed to do quality work with speed and economy. Made of special tempered brass that will stand hard usage and last for years

Ettore Steccone, who was granted Potent No. 2,123,638* on July 12, 1938 for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this potent, but has canceled its license and continues to sell squeegees marked· (STECCONE)

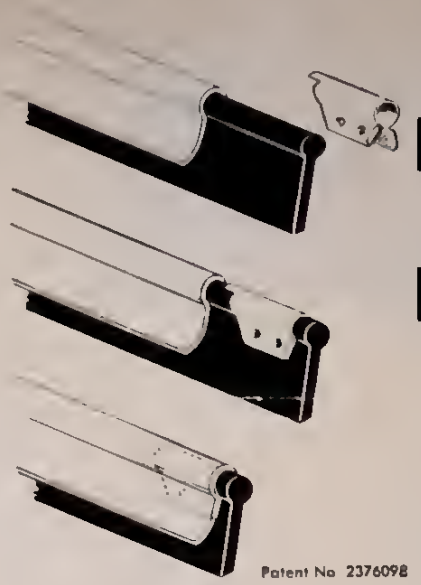
*Held invalid in Morse Starrett Products Co v Standard American Window Safety Device Co., 115 F (2d) 574

DOES A BETTER JOB, FASTER AND EASIER

EXHIBIT 2

ETTORE STECCONE
MASTER SQUEEGEE

FOR PROFESSIONAL WINDOW CLEANERS



Patent No 2376098

1 The rubber is inserted in the chonnel — no pushing — no pulling.

2 Then bross clip is slipped on inta position ond it takes but a second.

3 Then rubber ond bross clip ore pushed into the chonnel. The rubber is held in positive position, cannot slip, ond the rubber weors longer ond performs better.

● Designed especially to do high quality wark with speed and economy. A fine high quality taal made of special tempered brass that will stand hard usage and last for years.

The MASTER SQUEEGEE is made with a replaceable rubber held in place by a patented brass clip.

The finest and mast complete squeegee ever offered ta the trade.

THERE IS NO ECONOMICAL SUBSTITUTE FOR QUALITY

LIST PRICE — MARCH 1, 1950 — MASTER WINDOW SQUEEGEES

Size	Complete Per Doz.	Chonnel—with Rubber—Per Doz.	Rubbers* Per Doz.	Shipping Wgt. Per Doz.
18"	$23.00	$12.50	$3.20	7½ lbs.
16"	22.50	12.00	3.00	7 lbs.
14"	21.50	11.00	2.70	6½ lbs.
12"	20.50	10.00	2.50	6 lbs.
10"	19.50	9.00	2.20	5½ lbs.
8"	18.50	8.00	2.00	5 lbs.
6"	17.50	7.00	1.70	4½ lbs.

100-LB SHIPMENTS

Freight prepaid on 100 lb. shipments.

No freight allowed on shipments of less than 100 lbs

ALL PRICES f.o.b Oakland, California

BRASS HANDLES WITH LOCK RING $10.50 per dozen. **Shipping weight 3½ lbs. per dozen.**

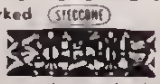
SQUEEGEES PACKED IN INDIVIDUAL CARTONS, $.60 NET extra per dozen.

*Rubbers also available in 36" lengths. Shipping weight on 18" Rubbers ONLY 11 lbs. per gross.

When Better Squeegees are made
Ettore Steccone will make them

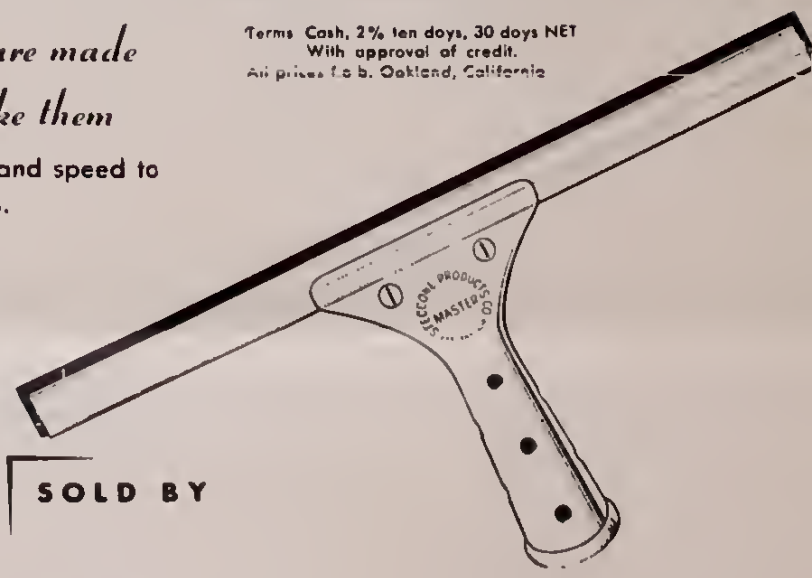
For today's need is greater efficiency and speed to provide higher wages with shorter haurs.

Ettore Steccone, who was granted Patent No. 2,123,638* on July 12, 1938 for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this patent, but has canceled its license and continues to sell squeegees marked (STECCONE)



*Held invalid in Morse Starrett Products Co v Standard American Window Safety Device Co., 115 F (2d) 574

Terms Cash, 2% ten days, 30 days NET
With approval of credit.
All prices f.o.b. Oakland, California



SOLD BY

Manufactured by
STECCONE PRODUCTS CO.
2827 22rd Ave., Oakland 6, Calif.
Telephone KEllog 2-5620

WHEN ORDERING BE SURE TO SPECIFY WHAT KIND YOU WANT

EXHIBIT 3

STECCONE PRODUCTS CO.

2827 TWENTY-THIRD AVENUE • OAKLAND 6, CALIFORNIA
Telephone KEllog 2-5629

Manufacturers

ETTORE STECCONE WINDOW SQUEEGEES

Dealers' Discount Information

SQUEEGEES COMPLETE

FREIGHT PREPAID ON 100 LBS. OR MORE . . . NO FREIGHT ALLOWED ON SHIPMENTS LESS THAN 100 LBS.

QUANTITY	DISCOUNT	
Under 1 Gross	50%	
1 to 3 Gross	50%	5%
3 to 5 Gross	50%	7%
Over 5 Gross	50%	10%

Sizes may be assorted

REPLACEMENT RUBBERS

Under 2 Gross	50%	
2 to 4 Gross (Freight Prepaid)	50%	
4 to 8 Gross (Freight Prepaid)	50%	5%
8 to 16 Gross (Freight Prepaid)	50%	10%
Over 16 Gross (Freight Prepaid)	50%	15%

All discounts apply to single orders and shipments of the specified quantities for the account of the jobb
Discounts are applicable against published current list prices, F.O.B. factory, Oakland, California.

When better squeegees are made Ettore Steccone will make them.

DISPLAY RACK
Price $1.25 net
Free with order for 6 dozen or more squeegees.

EXHIBIT 4

WINDOW CLEANER

A monthy publication and trade magazine for the indow Cleaning & Maintenance Industry circulat- throughout the U. S. and Canada.

Printed in the U.S.A.

Published by the Whitegate Printing Company

cutive Office: 855 Avenue of the Americas, New York 1 N. Y.
Tel. No. CH 4-1713

tors—WM. OFFENBERG — EDWARD A. FALASCA

ociate Editor—N. H. LORDE

culation Manager—FRANCES HIRSCHBERG

scription rates $3.00 per year effective February 1st, 1950.

TABLE OF CONTENTS

MARCH-APRIL, 1950

NOTHING TO JOKE ABOUT!

On February 15th in Oklahoma City, Oklahoma, window washer Ernest Whaley, aged 53, plunged to his death. He was on the job on the seventh floor of the Huckins Hotel when the accident occurred. the newspaper report in which thi stragic item first appeared, noted that Mr. Whaley had often joked about wearing a safety belt on the job. The item concluded rather flippantly, "He apparently forgot to fasten his safety belt."

We sincerely regret the loss of Mr. Whaley to our industry. The entire affair is too serious to simply dismiss with a cold report of the facts, however. We, who are devoted to the window cleaning industry, feel bound to all a note of caution to our readers—CHECK YOUR EQUIPMENT EVERYTIME YOU step out on that window ledge! And it's *never* something to joke about.

THE MEETING PLACE

ACKER & MANN, Inc.
foty Belts Sold and Repaired
oty Anchors Sold and Installed
1922 WAtkins 9-7967
120 WEST 18TH STREET
NEW YORK 11, N. Y.

HAAG LABORATORIES Inc.
Manufacturers of:
ap and Sanitary Chemical Products
For the Wholesaler
th STREET AND SEELEY AVENUE
P. O. Box No. 114
ISLAND ILLINOIS

OSEPH E. FRANKLE CO.
ufacturers' — Jobbers' — Importers'
BRUSHES
for Every Industrial Use
1336 RISING SUN AVENUE
Philadelphia 40, Pa.

ACME WINDOW CLEANING Co.
Cleaning Windows in
Stores, Offices, Private Dwellings, Hotels, Restaurants and Factories
Special Rates by the Month
1228 CHESTNUT AVENUE
BRidgeport 2163 Minneapolis, Minn.

FRANK A. SCHILLER
SCHILLER'S WINDOW CLEANING
3332 HOLLAND STREET
ERIE, PA.

DAYCON PRODUCTS
Management of Mr. David Cohen
1009 - 9TH STREET, N. W.
WASHINGTON, D. C.

AETNA WINDOW CLEANING Co.
"Let Us Do Your Janitor Work"
Reliable Crew of Men and Women
Prepared to Do Any Kind of Cleaning
Main 0281 1019 MAIN ST.

BUSINESS OPPORTUNITIES!

re's ideal spot to sell, purchase, or business set-ups, or used equipment. are 10c per word (or $1.00 a line) with one-line minimum charge. Repeat ads are 75c per line. Address all ads and inquiries to Editor, THE WINDOW CLEANER, 855 Sixth Avenue, N. Y. 1.

MUST SELL!

pproximate gross 1949 — 00. Window Cleaning, $6,500; ral Cleaning, $3,500. Massa- tts town — no competition. nsion possibilities. Asking 00, or highest offer. Reply A-1.

FOR SALE!

Window Cleaning Business and 10-Room Furnished House for Sale —good condition. Window Cleaning, Transportation, all equipment very best. $18,000 last year. Will sell for $20,000. If interested call Temple 2-7472, or write Boulevard Window Cleaning Co., 1103 Merrick, Detroit, Mich.

FLOOR WAXES

AT THEIR BEST!

Non-Slip! *Heavy Duty!*

EXTREMELY HIGH LUSTRE

Low in Price

TIDE WAX COMPANY

Specialist in Floor Waxes Since 1935

McHenry Illinois

MURDER!

CASH SALE

5 DAYS Only 5

GIANT ENGLISH CHAMOIS

6 for $20.00

$95.00 a KIP

EVERY Skin Over 3 Feet Long!

MEDIUM ENGLISH CHAMOIS

6 for $17.00

$79.00 a KIP

Wall-Washing Sponges

~~4/6~~

25 for $49.00

Genuine Steccone Rubber

20.00 Gross — $2.00 Dozen

Genuine Steccone Squeeges

(Complete with Handle & Rubber)

$12.00 a Dozen

PEARL BROS.

Importers — Chamois & Sponges

600 Capouse Avenue

Scranton 9, Penna.

Phones — 2-6045 7-3309

Check or Money Order Should Accompany All Oders

America's Fastest-Growing Window Cleaners' Supply Depot!

[ENDORSED]: FILED JULY 20, 1950.

[Title of District Court and Cause.]

AFFIDAVIT OF LEON PAUL

State of California,
County of Alameda—ss.

Leon Paul, being duly sworn, deposes and says:

That he is of legal age and that he is President for petitioner herein, Morse-Starrett Products Co.

That this Court, after a full trial on the merits, rendered an opinion in this cause dated October 25, 1949, and a judgment dated January 11, 1950. The opinion was filed and entered in this proceeding on October 25, 1949, and the judgment was filed and entered herein on January 11, 1950.

That petitioner herein, Morse-Starrett Products Co., received a copy of the December issue of the magazine entitled "The Window Cleaner" in the regular course of business and that said publication is circulated generally throughout the window cleaning industry.

That said magazine contained therein an advertising insert advertising the sale by Sterling Sanitary Supply Corporation of Steccone's Master Squeegee.

That said advertising insert is attached to the petition for an Order to show cause for contempt as Exhibit 1, which is filed herewith.

That affiant is informed and believes and therefore states that Sterling Sanitary Supply Corporation is an agent of the defendant herein; and that affiant is informed and believes and therefore states that the publication of said advertising insert was

at the direction of defendant herein; and that the cuts and material for the makeup of said advertising insert was supplied to said Sterling Sanitary Supply Corporation by defendant.

That the other advertising circulars, Exhibits 2, 3, 4 and 5, to the Petition for Order to Show Cause, including the March-April, 1950, issue of "The Window Cleaner" were received by petitioner herein in the regular course of business and affiant is informed and believes, and on such information and belief states that said Exhibits 2, 3, 4 and 5 were generally circulated throughout the window cleaning industry.

That the defendant has wholly failed and neglected to observe, comply and carry out the provisions and requirements of this Court's opinion and Order dated October 25, 1949, and this Court's judgment, dated and entered herein January 11, 1950.

That by reason of defendant's refusal to obey said opinion and Order of October 25, 1949, and said Judgment of January 11, 1950, and by the publication or authorizing for publication of the said advertising material, Exhibits 1, 2, 3, 4 and 5, to the Petition for Order to Show Cause, defendant has defeated and impaired the remedy granted to petitioner herein by this Court, and said acts have damaged and will continue to damage, if not prohibited by this Court, the petitioner herein.

Wherefore petitioner prays:

That this Court assess punitive damages against the defendant in the sum of One Thousand Dollars

($1,000.00) and order defendant to pay to petitioner reasonable attorneys' fees and costs herein and grant to petitioner the further relief prayed for in petitioner's Petition for Order to Show Cause and such other and further relief as the nature of this case may require.

Affiant states that petitioner has duly authorized its attorneys, Mellin, Hanscom & Hursh, to make this application and take this procedure for and on its behalf to punish the defendant for his wrongful neglect and refusal to comply with and obey the opinion and Order of this Court dated October 25, 1949, and the Judgment of this Court dated January 11, 1950.

Wherefore affiant demands:

That the defendant herein be punished for contempt of Court for his neglect and refusal to comply with and obey the Opinion and Order and Judgment entered herein as aforesaid, and that he be required to show cause before this Court why he should not be so punished.

/s/ LEON PAUL.

Subscribed and sworn to before me this 19th day of July, 1950.

[Seal] /s/ E. A. WARNESS,
Notary Public.

My commission expires May 13, 1953.

[Endorsed]: Filed July 20, 1950.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

On the petition of plaintiff and the verification made thereto and the affidavit of Leon Paul, dated July 19, 1950, charging contempt of court against Ettore Steccone, defendant herein.

It Is Hereby Ordered that the said Ettore Steccone be and appear before the Honorable Herbert W. Erskine, District Judge, at the Courthouse, Seventh and Mission Streets, San Francisco, California, on the 26th day of July, 1950, at 10:00 o'clock in the forenoon of that day, to show cause, if any he has, why he should not be punished for contempt of court in publishing advertising in connection with the sale of "Steccone's Master Squeegees" as more fully appears from the petition of plaintiff, and the affidavit of Leon Paul, copies of which are hereby ordered to be served herewith on defendant on or before the 24th day of July, 1950.

/s/ HERBERT W. ERSKINE,
United States District Judge.

Dated: July 20th, 1950.

[Endorsed]: Filed July 20, 1950.

[Title of District Court and Cause.]

AFFIDAVIT OF E. P. GILSDORF ON ORDER TO SHOW CAUSE

State of California
City and County of San Francisco—ss.

E. P. Gilsdorf, being first duly sworn, deposes and says:

1. That he is engaged in the business of selling and distributing janitor's supplies as a manufacturer's representative, under the name and style E. P. Gilsdorf & Co., with a place of business at 246 Ritch Street, San Francisco, California.

2. That since in or about the year 1946 affiant has represented Ettore Steccone, doing business under the name and style "Steccone Products Co.," the defendant herein, in the selling and distributing of his squeegee products, and in so doing affiant employs two (2) salesmen to call on the trade and, in addition, affiant personally calls on the trade in the solicitation of business.

3. That since about the month of February, 1950, affiant in the solicitation of sales of the squeegee products of Ettore Steccone, the defendant herein, has met repeated resistance in the form of statements from customers and prospective customers that they had been informed that "Steccone Products Co." would not be able to employ the name "Steccone" and such customers, and prospective customers, have implied that it was their further

understanding that this Court's ruling made it improbable that "Steccone Products Co." could remain in business for any length of time.

4. That affiant's said salesmen have reported that they too have encountered sales resistance to the squeegee products of "Steccone Products Co." in the form of statements from customers and prospective customers that they (the said customers and prospective customers) have been informed that "Steccone Products Co." would not be able to employ the name "Steccone" and such customers and prospective customers have implied that it was their further understanding that this Court's ruling made it improbable that "Steccone Products Co." could remain in business for any length of time.

5. That the affiant's personal experiences and those of his salesmen, as reported to him, related in Paragraphs 3 and 4 hereof, have occurred in San Francisco, Sacramento, San Jose, Portland, Los Angeles and Seattle.

/s/ E. P. GILSDORF.

Subscribed and sworn to before me this 24th day of July, 1950.

[Seal] /s/ MAUDE RALPH,
Notary Public.

My Commission Expires September 17, 1952.

[Endorsed]: Filed July 26, 1950.

[Title of District Court and Cause.]

AFFIDAVIT OF ETTORE G. STECCONE IN OPPOSITION TO ORDER TO SHOW CAUSE

State of California,
City and County of San Francisco—ss.

Ettore G. Steccone, being first duly sworn, deposes and says:

1. He has carefully read plaintiff's petition for order to show cause and the affidavit of Leon Paul, served upon him during the afternoon of Thursday, July 20th, 1950, and further affiant states that he has examined the several exhibits annexed to and referred to in said petition.

2. That immediately upon being advised that this Court had handed down its memorandum opinion of October 25th, 1949, affiant requested his counsel, I. M. Peckham, Esq., and Jas. M. Naylor, Esq., to give him an interpretation of the same for his guidance in the future use of affiant's name in the marking of his articles as well as the advertisement thereof.

3. That under date of November 8th, 1949, said Jas. M. Naylor gave affiant a written preliminary memorandum of opinion, of which a copy is annexed hereto and marked Exhibit A.

4. That immediately following communication to affiant of the fact that this Court had on January 11th, 1950, entered its judgment herein, affiant met with his counsel, I. M. Peckham, Esq., and Jas. M.

Naylor, Esq., to seek their further counsel and guidance relative to the things forbidden and the things permitted by the aforesaid judgment.

5. That several conferences were had with affiant's aforesaid counsel, during which affiant submitted his past advertising material and requested the assistance and guidance of counsel in the making of appropriate revisions therein for the sake of compliance with the intent and spirit of this Court's judgment herein.

6. Following such additional conferences with his counsel, affiant received a further memorandum of opinion under date of February 8th, 1950, interpreting the language of the judgment, a copy of which communication is annexed hereto and marked Exhibit B.

7. That under date of February 15th, 1950, affiant directed a further inquiry to his counsel, Jas. M. Naylor, Esq., of Naylor and Lassagne, concerning specific revision of the language employed on one piece of his advertising, and a copy of said communication of February 15th, 1950, is annexed hereto and marked Exhibit C, and a photostatic copy of the advertising piece referred to therein is annexed hereto and marked Exhibit D.

8. That under date of February 20th, 1950, affiant's counsel, Jas. M. Naylor, submitted a written opinion concerning the re-editing of the phrase in question, and a copy of the same is annexed hereto and marked Exhibit E.

9. That with respect to Exhibit 1 annexed to the Petition for Order to Show Cause on file herein, affiant denies that Sterling Sanitary Supply Corporation is either a distributor or an agent for affiant's products, but on the contrary is a mere jobber or dealer purchasing affiant's products in quantities at discount for re-sale.

10. Affiant denies that the material for making up the said insert (Exhibit 1) was furnished to said Sterling Sanitary Supply Corporation by affiant subsequent to the entry and issuance of this Court's Order (for opinion) of October 24th, 1949, and on the contrary asserts that said insert was made up by said Sterling Sanitary Supply Corporation entirely on its own and without assistance from affiant and that said concern employed affiant's price list of October 1st, 1948 in the make-up thereof, as will more particularly appear from a copy annexed hereto as Exhibit F.

11. That with respect to Exhibits 2, 3 and 4 annexed to the Petition for Order to Show Cause on file herein, the said advertising circulars and discount sheet were prepared by and for affiant upon the basis of his understanding of the interpretations of the Court's judgment and order by his counsel, referred to in Paragraphs 2-8 inclusive hereof.

12. That with respect to Exhibit 5 annexed to the Petition for Order to Show Cause, affiant avers again that said Sterling Sanitary Supply Corporation is neither affiant's distributor nor agent, but rather a jobber and dealer in affiant's products; affiant denies that the material for making up said

advertisement was supplied by affiant to said concern at any time and particularly subsequent to the entry of the judgment, and alleges the fact to be that the first knowledge affiant had of the said advertisement or its make-up was acquired on July 20th, 1950, when affiant was served with a copy of the Petition for Order to Show Cause on file herein.

13. That with further respect to Exhibit 5 annexed to the Petition for Order to Show Cause and particularly the advertisement of Formula Products, Inc., appearing therein, affiant alleges that so far as he is aware, and according to his records, he has not sold and does not sell his products to said Formula Products, Inc.; that if the said concern is in fact offering affiant's products for sale, then said products have been purchased from a source other than affiant; affiant alleges upon information and belief that said Formula Products, Inc., is offering for sale and selling the products of plaintiff herein.

14. That with further respect to Exhibit 5 annexed to the Petition for Order to Show Cause and particularly the advertisement of Pearl Bros. appearing therein, affiant alleges that he does not know whether the said advertisement refers to his product or not as affiant has been informed that Pearl Bros. handle both the products of affiant and Morse-Starrett Products Co., plaintiff herein.

15. That since about the month of February, 1950, affiant has received a plurality of verbal reports from those persons concerned with the sale of his products that, in the solicitation of sales of affi-

ant's squeegee products, repeated resistance had been met in the form of statements from customers and prospective customers that they had been informed that "Steccone Products Co." would not be able to employ the name "Steccone" and such customers and prospective customers have implied that it was their further understanding that this Court's ruling made it improbable that "Steccone Products Co." could remain in business for any length of time.

16. That, upon information and belief, affiant avers that the employees and agents of Morse-Starrett Products Co., plaintiff herein, have, since entry of the Court's order of October 25th, 1949, herein, been telling the trade that affiant was enjoined from using his name "Steccone," without explaining that the Court's opinion and judgment did not contain an absolute prohibition against use thereof but was qualified, and coupling with this half-truth implications that this Court's decision in the cause would eventually put affiant out of business, all for the purpose of competing unfairly with affiant and causing him irreparable damage and injury.

/s/ ETTORE G. STECCONE.

Subscribed and sworn to before me this 25th day of July, 1950.

[Seal] /s/ MAUDE RALPH,
Notary Public.

My Commission Expires September 17, 1952.

EXHIBIT A

(Copy)

Naylor and Lassagne
Attorneys at Law
Patent—Trade Mark and Copyright Matters
Russ Building
San Francisco 4, California

November 8, 1949

Mr. Ettore Steccone
Steccone Products Co.
2827 Twenty-third Avenue
Oakland 6, California

Re: Morse-Starrett Products Co.
v. Steccone—No. 27081-H

Dear Mr. Steccone:

The other day you and I. M. Peckham, Esq., came by my office and asked me to review the memorandum opinion of October 25th, 1949, handed down by Judge Herbert W. Erskine, and advise you specifically relative to the uses of the name "Steccone" which are permitted and forbidden, so long as this decision shall stand.

In this connection I have carefully read Judge Erskine's opinion and the five decisions cited on page 20 thereof, as well as check the uses of the name "Steccone" that you have been making, with the following results:

1. It is clear that you should not continue the use of the name "Steccone," or its equivalent "Steccone's," in the manner in which these markings have been employed on your squeegee rubber and in your

advertising. The second item of the Court's conclusions (page 19) treats specifically with the marking and selling of squeegees under the trade mark "Steccone" as unfair competition. There are many cases standing for the proposition that the mere addition of an apostrophe and the letter "s" to a surname will not avoid unfair competition or infringement, and Dodge Stationery Co. v. Dodge, 145 Cal. 380, cited at page 20 of the Court's opinion, is typical.

It is, therefore, recommended that the word "Steccone's" be removed from your squeegee rubbers. It is also recommended that you discontinue the use of the word "Steccone's" in your advertising circulars wherever it occurs as a prefix to terms such as "Challenger Squeegee" or "Master Squeegee." This same recommendation goes to all advertising material, such as display cards and the like.

2. We conclude that the marking presently employed on your squeegee handles meets all of the requirements of the Court's decision. We refer specifically to the mark "Master" encircled by the phrase "Steccone Products Co., Oakland, California." Greater prominence is there given to the word "Master" than to the other wording, and we deem this as "sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff."

3. We feel that the trade style "Steccone Products Co." may be used in environments other than the specific marking employed on the handles of

your squeegees, so long as you accompany it by "sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff." For example, we feel that it is proper for you to employ that trade style in the sale of your "Challenger" squeegees. In that connection, you must realize that the use you make of the trade style "Steccone Products Co." must be a fair use, that is to say, you cannot give greater prominence to the word "Steccone" than to the remaining words in the phrase; nor should you employ bold or excessively large type to display "Steccone Products Co." with small or diminutive type to identify your "Master" or "Challenger" brands.

4. We think it possible for you to employ your full name "Ettore Steccone," if you so desire, in connection with the making, advertising and selling of your squeegees. Bear in mind that there is actually no complete prohibition against the use of your name; it is only against your use of your surname, as "Steccone" or "Steccone's" standing alone and unaccompanied by other matter. It, therefore, seems clear to us that you could employ your name "Ettore Steccone" as a mark on your squeegee handles, squeegee rubbers and in advertising and we feel that the only condition posed upon you in that connection is that the words "Ettore" and "Steccone" should be given equal prominence as to style of lettering, size of lettering and color of lettering. We feel quite definite that in such a situation the word or name "Steccone" is accom-

panied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by the plaintiff as noted in the decision. We do not think that the notation "E. Steccone" would be satisfactory under the Court's decision.

5. We caution you against the continuation of the use of certain material or wording in your advertising. We refer specifically to phrases like the following which appear on the circular for the "Steccone's Master Squeegee":

> "Be sure you buy the Genuine Steccone's Master Squeegee manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name."

and

> "Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than six years with the firm that arbitrarily uses the name Steccone."

The latter expression also appears on the price circular issued by you on "Steccone's Master and Challenger Window Squeegees." Quite definitely some re-editing is here required. For your guidance we have marked the objectionable parts of duplicates of your advertising material and the same are attached hereto.

6. We caution you against any display of any name or phrase which includes the word "Steccone" in an oval design or an oval outline.

We appreciate that in these trade name cases it is difficult sometimes to interpret the decisions. The foregoing is the most reasonable interpretation we can place upon the ruling in your case. We caution you that it is necessary for you to follow carefully the advice of counsel in setting up substitute markings and names, and therefore believe it would be fitting and proper for you to submit to Mr. Peckham or the writer any proposals you may have along these lines.

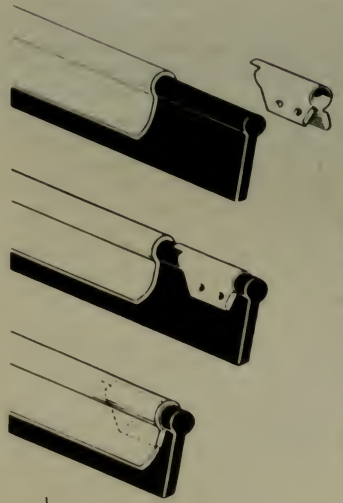
I have not reached any conclusion concerning the advisability of appealing, but will reserve decision on that point until I see the exact nature of the findings of fact, conclusions of law and judgment to be approved and entered by the Court.

Yours very truly,

For NAYLOR and LASSAGNE

JMN:bae
Encl.
cc: Mr. Peckham
2962

THE FINEST SQUEEGEE EVER OFFERED TO THE TRADE



1. The rubber is inserted in the handle — no pushing or pulling.

2. Then brass clip is slipped on into position and it takes but a second.

3. Then rubber and brass clip are pushed into the channel. The rubber is held in positive position, cannot slip, and the rubber wears longer and performs better.

For the window cleaner the STECCONE MASTER is the answer to today's need for greater efficiency and speed to provide higher wages with shorter hours.

Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than seven years with the firm that arbitrarily uses the name Steccone.

- Designed especially to do high quality work with speed and economy. A fine high quality tool made of special tempered brass that will stand hard usage and last for years.

- STECCONE'S MASTER SQUEEGEE is made with a replaceable rubber held in place by a patented brass clip.

- Be sure you buy the GENUINE STECCONE'S MASTER SQUEEGEE manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name.

- There is no economical substitute for quality.

DOES A BETTER JOB, FASTER AND EASIER

from a Window Cleaner."

Most every window cleaner knows the Steccone Squeegee, but few know that the inventor, Ettore Steccone, has been a window cleaner since 1920 and that the Steccone Master is a product fashioned from the experience of these many years of professional work.

The Steccone Master is manufactured by a professional window cleaner who knows the problems of the profession and has built a squeegee that adapts itself to every type of job—whether it be on the sidewalk, office building or private home. No matter how dirty the window may be, the Steccone Master removes the dirt film without going over it the second time. The patented clips and the improved handle have made the Steccone Master the most efficient, the easiest to handle, and the best squeegee that money can buy. Accept only the genuine STECCONE MASTER SQUEEGEE with the patented clips. It costs no more to have the best. You will clean more windows in less time and with less effort. Try a STECCONE MASTER. You'll never be satisfied with any other.

SOLD BY

STECCONE'S MASTER SQUEEGEE

for Professional Window Cleaners

Manufactured by

STECCONE PRODUCTS CO.

2827-23rd Ave., Oakland 6, California

Telephone KEllog 2-5629

eccone's CHALLENGER Squeegee

Challenger Squeegee is made especially for the professional window cleaner who res a high grade tool. The Challenger is made of special tempered brass that holds nd will give years of service.

ECCONE'S CHALLENGER meets all the require- of the expert window cleaner—does a good job— —nice to handle—made to wear.

E CHALLENGER is a high quality tool which gives fficiency. No other squeegee performs better or nger.

- REPLACEABLE RUBBER—easy to insert and remove—wears better and lasts longer—performs better.
- SLIDING HANDLE—quickly adjusted to any position on the channel or put on any length channel.
- OUR MANUFACTURING TECHNIQUE and our great buying power allow us to sell at a very low price.

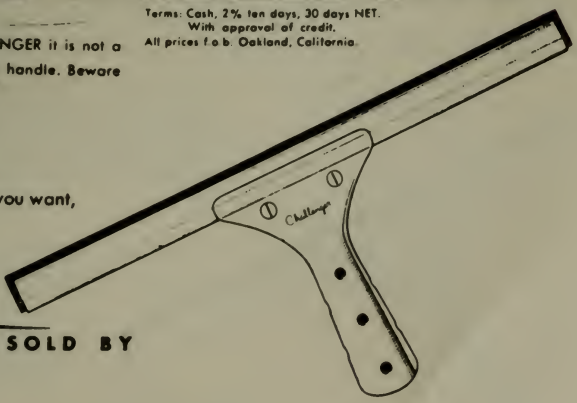
LIST PRICE—SEPTEMBER 1, 1949—CHALLENGER WINDOW SQUEEGEES

	Complete Per Doz.	Channel—with Rubber—Per Doz	Rubbers Per Doz	Shipping Wgt. Per Doz.	100-LB. SHIPMENTS
)"	$20.60	$11.40	$3.20	8 ½ lbs.	
)"	20.00	10.75	3.00	8 ½ lbs.	**Freight prepaid on 100 lb. shipments.**
)"	19.20	9.90	2.70	7 ½ lbs.	No freight allowed on shipments of less than 100 lbs.
)"	18.10	8.80	2.50	7 lbs.	
)"	17.00	7.70	2.20	6 ½ lbs.	SHIPMENTS
)"	16.00	6.75	2.00	5 ½ lbs.	f. o. b. Oakland, California
)"	15.00	6.00	1.70	5 ½ lbs.	

HANDLES ONLY, $9.25 per dozen. Shipping weight 4 lbs. per dozen.
GEES PACKED IN INDIVIDUAL CARTONS, $.60 NET extra per dozen.
rs also available in 36" lengths. Shipping weight on 18" Rubbers ONLY 12 lbs. per gross.

Terms: Cash, 2% ten days, 30 days NET.
With approval of credit.
All prices f.o.b. Oakland, California.

ot a STECCONE MASTER or CHALLENGER it is not a
NE STECCONE. Look for name on the handle. Beware
tions bearing the name Steccone.



WINDOW SQUEEGEE that you want,
Steccone Has It!

SOLD BY

anufactured by
E PRODUCTS CO.
Ave., Oakland 6, Calif.
one KEllog 2-3629

WHEN ORDERING BE SURE TO SPECIFY WHAT KIND YOU WANT

STECCONE'S MASTER SQUEEGEE

FOR PROFESSIONAL WINDOW CLEANERS

1 The rubber is inserted in the handle—no pushing—no pulling.

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3 Then rubber and brass clip are pushed into the channel. The rubber is held in positive position, cannot slip, and the rubber wears longer and performs better.

● Designed especially to do high quality work with speed and economy. A fine high quality tool made of special tempered brass that will stand hard usage and last for years.

STECCONE'S MASTER SQUEEGEE is made with a replaceable rubber held in place by a patented brass clip.

The finest and most complete squeegee ever offered to the trade.

THERE IS NO ECONOMICAL SUBSTITUTE FOR QUALITY

LIST PRICE—SEPTEMBER 1, 1949—MASTER WINDOW SQUEEGEES

Size	Complete Per Doz.	Channel—with Rubber—Per Doz.	Rubbers* Per Doz.	Shipping Wgt. Per Doz.
18"	$23.00	$12.50	$3.20	8½ lbs.
16"	22.50	12.00	3.00	8½ lbs.
14"	21.50	11.00	2.70	7½ lbs.
12"	20.50	10.00	2.50	7 lbs.
10"	19.50	9.00	2.20	6½ lbs.
8"	18.50	8.00	2.00	5½ lbs.
6"	17.50	7.00	1.70	5½ lbs.

100-LB. SHIPMENTS

Freight prepaid on 100 lb. shipments.

No freight allowed on shipments of less than 100 lbs.

SHIPMENTS

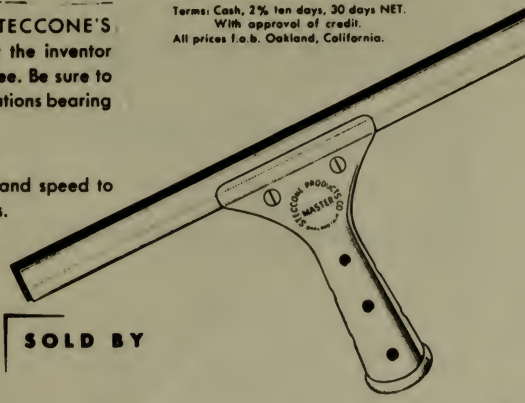
f. o. b. Oakland, California

BRASS HANDLES WITH LOCK RING $10.50 per dozen. Shipping weight 4 lbs. per dozen.
SQUEEGEES PACKED IN INDIVIDUAL CARTONS, $.60 NET extra per dozen.
*Rubbers also available in 36" lengths. Shipping weight on 18" Rubbers ONLY 12 lbs. per gross.

Be sure you buy the GENUINE STECCONE'S MASTER SQUEEGEE manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name.

Terms: Cash, 2% ten days, 30 days NET.
With approval of credit.
All prices f.o.b. Oakland, California.

For today's need is greater efficiency and speed to provide higher wages with shorter hours.



Steve Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than six years with the firm that arbitrarily uses the name Steccone.

SOLD BY

Manufactured by
STECCONE PRODUCTS CO.
2027 23rd Ave., Oakland 6, Calif.
Telephone KEllog 2-5629

WHEN ORDERING BE SURE TO SPECIFY WHAT KIND YOU WANT

STECCONE PRODUCTS CO.

2827 TWENTY-THIRD AVENUE • OAKLAND 6, CALIFORNIA
Telephone KEllog 2-5629

Manufacturers of

STECCONE'S MASTER AND CHALLENGER WINDOW SQUEEGEES

Dealers' Discount Information

SQUEEGEES COMPLETE

FREIGHT PREPAID ON 100 LBS. OR MORE . . . NO FREIGHT ALLOWED ON SHIPMENTS LESS THAN 100 LBS.

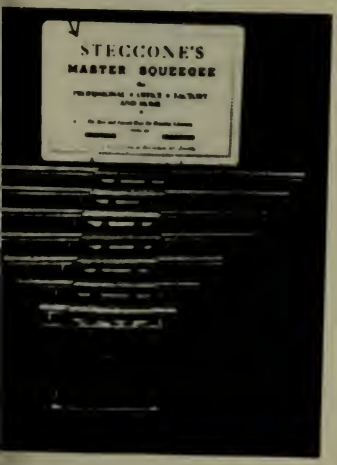
QUANTITY	DISCOUNT	
Under 1 Gross	50%	
1 to 3 Gross	50%	5%
3 to 5 Gross	50%	7%
Over 5 Gross	50%	10%

Sizes may be assorted

REPLACEMENT RUBBERS

Under 2 Gross	50%	
2 to 4 Gross (Freight Prepaid)	50%	
4 to 8 Gross (Freight Prepaid)	50%	5%
8 to 16 Gross (Freight Prepaid)	50%	10%
Over 16 Gross (Freight Prepaid)	50%	15%

...its apply to single orders and shipments of the specified quantities for the account of the jobber.
...are applicable against published current list prices, F.O.B. factory, Oakland, California.



DISPLAY RACK
Price $1.25 net
Free with order for 6 dozen or more squeegees.

IMPORTANT

Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than six years with the firm that arbitrarily uses the name Steccone.

EXHIBIT B

(Copy)

Naylor and Lassagne
Attorneys at Law
Patent—Trade Mark and Copyright Matters
Russ Building
San Francisco 4, California

February 8, 1950

Mr. Ettore Steccone
Steccone Products Co.
2827 Twenty-third Avenue
Oakland 6, California

Re: Morse-Starrett Products Co.
v. Steccone—No. 27081-H

Dear Mr. Steccone:

In our conference of January 17th, 1950, you stated that you had decided not to take an appeal from the final judgment signed and entered on January 11th, 1950. We confirm this because but thirty days is allowed for appeal and the time will expire on Friday, February 10th. Therefore, we will allow that date to pass without taking any action.

Also during the January 17th conference you asked me to review the Court's judgment and advise you to what extent and in what manner the word "Steccone" could be employed in the marking of your products and in the advertisement thereof. Some language was proposed and discussed but you did not indicate the exact language you desire to employ. While I will not undertake to serve as a copy writer for you nor act as a substitute for your

advertising counsellor in the choice of particular language, nevertheless I will review the judgment and endeavor to assist you by pointing out the things which you should not do. Following your receipt of this letter it is suggested that you talk with your advertising counsel or printer, follow the suggestions made herein and then submit to Mr. Peckham or the writer a draft of what you propose to use so that we can approve it. I caution you to follow this procedure very carefully as it is the only way in which attorneys can assume the responsibility called for in your present position.

At the outset, I will advise that I checked plaintiff's and defendant's exhibits at court and am familiar with the various markings which appear thereon. I have also reviewed my letter of November 8th with sample advertisement annexed and believe it would be well for you to take that letter to your advertising counsellor or your printer along with this communication, for complete guidance.

The judgment language is rather explicit. In the first place, there is an absolute prohibition against employment of the trade name "Steccone" enclosed by an oval. Secondly, there is a prohibition against your so using the name "Steccone" that reasonably attentive purchasers cannot readily distinguish between the products of plaintiff and defendant, but this is qualified by the provision that you may make, advertise and sell squeegees as the product of Steccone Products Co., or as your product.

"so long as the name 'Steccone,' used alone

or in conjunction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff."

Noting that Plaintiff's Exhibit 19 on the trial is one of your squeegee heads whereon the word "Master" appears within the circular disposition of "Steccone Products Co., Oakland, California," we think it plain that the Court had no intent to enjoin you against the use of that marking, for there the word "Steccone" is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff. For example, the featured mark is "Master" and "Steccone" is relegated to a position of secondary importance, being but a part of the name of the manufacturer and without special emphasis. If the Court had had something different in mind, it would have enjoined you against using the trade style "Steccone Products Co."

We feel that what the Court was condemning was a trade-mark use such as you made of the word "Steccone" on the flexible squeegees, the blade of which was marked simply "Steccone Pat. Pend." (Defendant's Exhibit G). Additionally, we think the Court was condemning the advertising use you had been making, prior to and during trial, wherein the word "Steccone" was being featured (see our letter of November 8th, 1949, for detailed comment on your advertising material).

Therefore, we feel that you should most certainly discontinue the marking of flexible squeegees, or any other product, with wording such as: "Steccone," whether or not the same be accompanied by a phrase such as "Pat. Pend."

With respect to advertising, we again call your attention to our letter of November 8th, 1949, because it is rather complete in its treatment of what you should do or should not do. Under no circumstances, should the word "Steccone" be emphasized or featured in comparison to the other word matter with which it may be associated. Thus, if the words "Ettore Steccone" or "Steccone Products Co." are employed, the word "Steccone" should be in type of the same size as the accompanying words.

During our conference you asked a number of questions concerning your right to refer to the fact that you had invented a squeegee and received a patent for the same. The only specific proposal on which you wanted our advice was whether or not you could reproduce the drawing sheet from your patent showing the number, date, your name and the device that was patented, and include such a representation in your advertising matter. We expressed the opinion then, and we confirm it now, that we see no objection to such a procedure, provided such reproduction is accompanied by or bears upon its face a very plain statement to the effect that the patent was held invalid by the Seventh Circuit Court of Appeals. If left unaccompanied by such an explanatory statement, the observer would

get the impression that the patent is still in force and effect, which is not the case, and the Court might well say that you had gone too far.

I hope the foregoing suggestions will be helpful to you and now await specific proposals in the way of draft copies or proof sheets of what you propose to employ, so that Mr. Peckham and I can give the same final approval.

Yours very truly,

For NAYLOR and LASSAGNE

JMN:bae

EXHIBIT C

Steccone Products Co.
2827 Twenty-third Avenue
Oakland 6, California
Telephone KEllog 2-5629

February 15, 1950

Naylor and Lassagne
420 Russ Building
San Francisco 4, California

Dear Mr. Naylor:

Your letter of February 8, 1950, does not say anything that you did not say in your letter of November 28, 1949.

The most important thing I want to know is how I can word the section bracketed in pencil on the enclosed envelope stuffer. I would like to use the following:

"Ettore Steccone, the originator of the Steccone Squeegee, and owner of the Steccone Prod-

ucts Co., has had no connection for more than eight years with the firm that uses the name Steccone as a trade-mark on their squeegees."

If you do not think this is proper would you suggest wording that would be suitable for this purpose. I do not see anything wrong with the wording I have suggested but, of course, I am not a lawyer and I know very little about the law. The only thing I do know is that this is the truth. As you know, I am the originator of the Steccone Squeegee and the first squeegee the Morse-Starrett people put out was stamped "Steccone" and bore my patent number. I still have some samples of that in my possession.

The two most important things that I want to bring out on this is that I am the originator of the Steccone Squeegee and that I have nothing to do with the firm that uses the name "Steccone" as a trade-mark. The wording is immaterial as long as it brings out these facts which are the truth.

It is imperative that I put out a new Price List as the one I have now is obsolete. Therefore I would appreciate it very much if you will let me have your opinion of this matter just as soon as possible.

Thanking you.

Sincerely,

STECCONE PRODUCTS COMPANY,

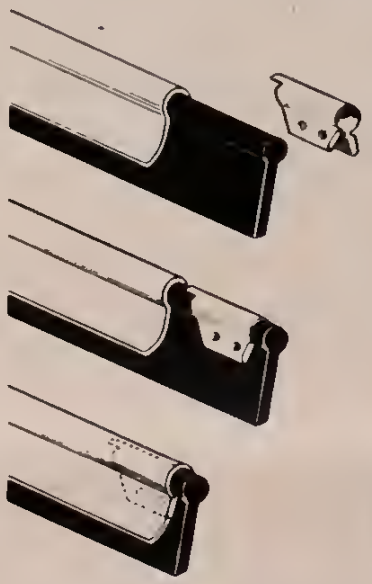
/s/ E. STECCONE.

Encl.
ES/ep

EXHIBIT D

STECCONE'S MA

THE FINEST SQUEEGEE EVE



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For the window cleaner the STECCONE MASTER is the answer to today's need for greater efficiency and speed to provide higher wages with shorter hours.

***

Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone Products Co., has had no connection for more than seven years with the firm that arbitrarily uses the name Steccone.

DOES A BETTER JOB,

P

NAYLOR & LASSAGNE
ATTORNEYS AT LAW
RUSS BUILDING
SAN FRANCISCO 4
CALIFORNIA

EXHIBIT E

(Copy)

Naylor and Lassagne
Attorneys at Law
Patent — Trade Mark and Copyright Matters
Russ Building
San Francisco 4, California

February 20, 1950

Mr. Ettore Steccone
Steccone Products Co.
2827 Twenty-third Avenue
Oakland, California

Re: Morse-Starrett Products Co.
v. Steccone—No. 27081-H

Dear Mr. Steccone:

This will reply to your letter of February 15th wherein you asked for further guidance, in the selection of appropriate language to be employed in your advertising material as an aftermath of the Court's judgment in the above-entitled proceeding.

Mature reflection leads us to believe that it would be appropriate for you to employ a statement such as the following:

> "Ettore Steccone, who was granted Patent No. 2,123,638* on July 12, 1938, for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this patent,

"*Held invalid in Morse-Starrett Products Co. v. Standard American Window Safety Device Co., 115 F (2d) 574."

but has canceled its license and continues to sell squeegees marked: STECCONE

It is our feeling that the above-quoted language is not only a strict adherence to the truth but includes "sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff" as called for in Paragraph XIII of the judgment signed and entered by the Court on January 11, 1950.

For the record we will say that the language recommended above is not subject to any revision or re-editing unless approval is first had from Mr. Peckham or the writer.

Yours very truly,

For NAYLOR and LASSAGNE

JMN:bae
cc: Mr. Peckham
2962

EXHIBIT F

67

STECCONE'S MASTER SQUEEGEE

FOR PROFESSIONAL WINDOW CLEANERS

1 The rubber is inserted in the handle—no pushing—no pulling.

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The finest and most complete squeegee ever offered to the trade.

THERE IS NO ECONOMICAL SUBSTITUTE FOR QUALITY

LIST PRICE, OCTOBER 1, 1948—MASTER WINDOW SQUEEGEES

Size	Complete Per Doz.	Channel—with Rubber—Per Doz.	Rubbers* Per Doz.	Shipping Wgt. Per Doz.	100-LB. SHIPMENTS
18"	$23.00	$12.50	$3.20	9 lbs.	We make a freight allowance of $2.00 per cwt. to all points east of Salt Lake City on shipments of 100 lbs. or over. No freight allowed on shipments of less than 100 lbs.
16"	22.50	12.00	3.00	9 lbs.	
14"	21.90	11.40	2.70	8 lbs.	
12"	21.40	10.90	2.50	7 lbs.	
10"	20.80	10.30	2.20	7 lbs.	
8"	20.20	9.70	2.00	6 lbs.	SHIPMENTS f.o.b. Oakland, California
6"	19.60	9.10	1.70	6 lbs.	

BRASS HANDLES WITH LOCK RING $10.50 per dozen. Shipping weight 4 lbs. per dozen.
SQUEEGEES PACKED IN INDIVIDUAL CARTONS, $.60 NET extra per dozen.
*Rubbers also available in 36" lengths. Shipping weight on 18" Rubbers ONLY 12 lbs. per gross.

Terms: Cash, 2% ten days, 30 days NET.
With approval of credit.
All prices f.o.b. Oakland, California.

Be sure you buy the GENUINE STECCONE'S MASTER SQUEEGEE manufactured by the inventor and originator of the Steccone Squeegee. Be sure to ask for Steccone Master. Beware of imitations bearing our name.

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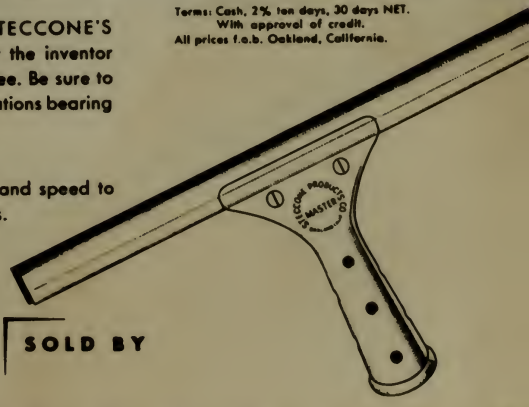

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SOLD BY

Manufactured by
STECCONE PRODUCTS CO.
2827 23rd Ave., Oakland 6, Calif.
Telephone KEllog 2-5629

WHEN ORDERING BE SURE TO SPECIFY WHAT KIND YOU WANT

Steccone's CHALLENGER Squeegee

The Challenger Squeegee is made especially for the professional window cleaner who requires a high grade tool. The Challenger is made of special tempered brass that holds up and will give years of service.

- STECCONE'S CHALLENGER meets all the requirements of the expert window cleaner—does a good job—speedy—nice to handle—made to wear.
- THE CHALLENGER is a high quality tool which gives great efficiency. No other squeegee performs better or lasts longer.
- REPLACEABLE RUBBER—easy to insert and remove—wears better and lasts longer—performs better.
- SLIDING HANDLE—quickly adjusted to any position on the channel or put on any length channel.
- OUR MANUFACTURING TECHNIQUE and our great buying power allow us to sell at a very low price.

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100-LB. SHIPMENTS

We make a freight allowance of $2.00 per cwt. to all points east of Salt Lake City on shipments of 100 lbs. or over. No freight allowed on shipments of less than 100 lbs.

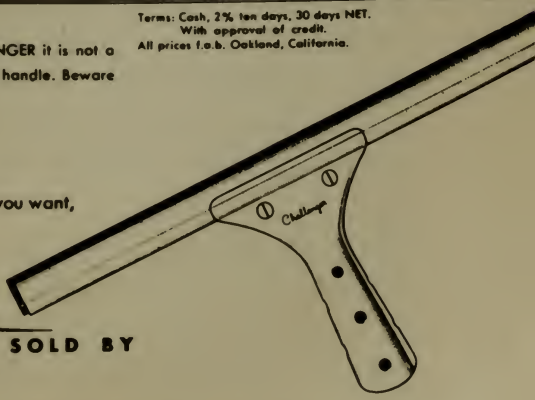
SHIPMENTS f.o.b. Oakland, California

BRASS HANDLES ONLY, $9.25 per dozen. Shipping weight 4 lbs. per dozen.
SQUEEGEES PACKED IN INDIVIDUAL CARTONS, $.60 NET extra per dozen.
*Rubbers also available in 36" lengths. Shipping weight on 18" Rubbers ONLY 12 lbs. per gross.

Terms: Cash, 2% ten days, 30 days NET.
With approval of credit.
All prices f.o.b. Oakland, California.

If it is not a STECCONE MASTER or CHALLENGER it is not a GENUINE STECCONE. Look for name on the handle. Beware of imitations bearing the name Steccone.

If it's a **WINDOW SQUEEGEE** that you want,
Steccone Has It!



SOLD BY

Manufactured by
STECCONE PRODUCTS CO.
[illegible] 23rd Ave., Oakland 6, Calif.
Telephone KEllog 2-5629

WHEN ORDERING BE SURE TO SPECIFY WHAT KIND YOU WANT

[ENDORSED]: FILED JULY 26, 1950.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF HEARING ON ORDER TO SHOW CAUSE

Wednesday, July 26, 1950

Appearances:

JACK E. HURSH, ESQ.,
For the Plaintiff.

JAMES M. NAYLOR, ESQ.,
For the Defendant.

Mr. Hursh: May it please your Honor, this is a hearing on order to show cause in the case of Morse-Starrett Products Company versus Ettore G. Steccone, an individual doing business under the firm name and style of Steccone Products Company. Your Honor will remember the trial was had about a year and a half ago.

The Court: I remember all about it; and I issued injunction against the use of the name "Steccone" on these squeegees made by him unless they were identified so that the public wouldn't believe they were produced by Morse-Starrett Products Company.

Mr. Hursh: That is true. Attached to our petition we have certain exhibits, and Mr. Naylor this morning served on me affidavit of Mr. Steccone that shows some additional advertising material. I would like to ask Mr. Steccone about those circulars. I don't see him in the courtroom. Is he going to be here, Mr. Naylor?

Mr. Naylor: No, not to my knowledge.

Mr. Hursh: Well, as I understood, the Court's order was that Mr. Steccone would appear this morning. I would like to find out whether or not any of the advertising material appearing in his affidavit was ever published and issued to the trade. Can you answer that?

Mr. Naylor: Which do you have in mind, Mr. Hursh?

Mr. Hursh: Well, I don't know what exhibit it is. This circular and this circular (indicating).

Mr. Naylor: That is 1948. All that material is prior to the trial. All that is prior to the trial.

Mr. Hursh: I would also like to have asked Mr. Steccone with respect to Exhibit 1, as to the material contained in Exhibit 1.

The Court: Do you mean your petition?

Mr. Hursh: Yes, on our petition for an order to show cause. But we particularly—I might state with respect to Exhibit 1, your Honor, that this was published by inserting it in what is known as the Window Cleaner, which is a trade journal published generally throughout the United States in the window cleaning industry; and on or about December 27th Morse-Starrett Products Company received the December issue of this trade publication and as an insert in the trade publication was the circular, Exhibit 1; and we consider that to be a violation of the Court's memorandum opinion and order entered October 25, 1949. Particularly the statement that, "Ettore Steccone, the originator of the Steccone Squeegee and owner of the Steccone

Products Company, has had no connection for more than six years with the firm that arbitrarily uses the name Steccone. Manufactured by Steccone Products Co."; and just about that, "Be sure you buy the genuine Steccone's Master Squeegee." We think that is an additional violation of the Court's memorandum opinion.

After the entry of the opinion, the Court entered judgment on January 11th, and subsequent to the entry of the judgment, sometime in April of this year—April 11th, I believe it is—The Morse-Starrett Products Company received numerous other advertising circulars that were published by the defendant herein, and we feel that these advertising circulars are also in contempt of this Court's order.

The Court: What does my judgment say there? Just read it.

Mr. Hursh: The judgment states in Paragraph IV—the first three paragraphs are in relation to the parties and jurisdiction: "That plaintiff is the owner of the trade-name 'Steccone' enclosed by an oval and is entitled to the exclusive use thereof for squeegees as between the parties to this action.

"V. That as between the parties to this action, the plaintiff is the owner of the legal title to the United States Trade-Mark Registration Nos. 371,776, dated October 3, 1939, and 502,662, dated October 5, 1948.

"VI. That plaintiff's trade-name 'Steccone' has acquired a secondary meaning as solely identifying the products of plaintiff and plaintiff's products alone.

"VII. That defendant has unfairly competed with plaintiff.

"VIII. That plaintiff has not unfairly competed with defendant.

"IX. That plaintiff has not infringed upon any trade-mark.

"X. That defendant proved no damages against plaintiff.

"XI. That the cross-complaint herein be and the same is hereby dismissed.

"XII. That plaintiff waived its claim for damages against defendant.

"XIII. That a writ of injunction issue out of and under the seal of this Court enjoining and restraining the defendant, his associates, attorneys, employees, servants, agents, and those in privity with him, or them, from in any manner using the trade-name 'Steccone' enclosed by an oval in connection with squeegees, or the handles thereof, and from so using the name 'Steccone' that reasonably attentive purchasers cannot readily distinguish between the products of plaintiff and defendant, provided, however, that defendant may make, advertise and sell squeegees as the products of the Steccone Products Co., or as defendant's product, so long as the name 'Steccone,' used alone or in conjunction with other words or symbols, on the squeegees or in the written advertising thereof, is accompanied by sufficient explanatory material so as to clearly differentiate it from the product manufactured and sold by plaintiff.

"XIV. That plaintiff recover from defendant its costs and disbursements in this suit in the sum of $..... and have execution therefor."

We contend that the advertising material published by the defendant is in direct violation of that judgment in that that advertising material unfairly competes with the plaintiff. In Exihibit 2——

The Court: I have read Exhibit 2.

Mr. Hursh: All these exhibits have the same general pattern. We state he has used the name "Steccone Products Company," the name "Steccone," and also has used our trade-mark in connection with the small print margin which states that "Ettore Steccone, who was granted Patent No. 2,123,638 on July 12, 1938, for a squeegee, has no connection with Morse-Starrett Products Co., which was once licensed under this patent, but has canceled its license and continues to sell squeegees marked: 'Steccone,' using our trade-mark legend." Then the footnote, "Held invalid in Morse-Starrett Products Co. v. Standard American Window Safety Device Co., 115 F. (2nd) 574."

That makes it appear the plaintiff is a pirate, but still using this trade-mark Steccone, holds the plaintiff up to ridicule in the industry, and we do not think that complies with this Court's judgment. We think that each of these documents are a direct violation of the Court's order.

Then turning to the March-April circular, the Window Cleaner publication for 1950, we find three advertisements contained therein. That is Exhibit 5, your Honor. On Page 3 of the publication is an

advertisement of the Sterling Sanitary Supply Corporation which advertises "Steccone's Master Squeegee," and just on the column above Sterling's ad is Formula Products, Inc., of Newark, New Jersey, that advertises "Genuine Steccone Rubbers, 18", $22.50 per gross." And on Page 7, in the last column, is an advertisement of Pearl Brothers advertising "Genuine Steccone Rubber, $20.00 gross, $2.00 dozen; Genuine Steccone Squeegees (complete with Handle & Rubber), $12.00 a dozen."

I was served this morning affidavit and memorandum on behalf of Steccone. He contends Sterling Sanitary Supply Corporation is a jobber of his, that he has no control over this jobber or any advertisement put out by the jobber, and that Exhibit 1 to the original petition shows an advertisement that was composed solely by Sterling Sanitary Supply Corporation, that he has no control over this jobber. He denies knowledge of it.

The Court: I believe he states Pearl Brothers——

Mr. Hursh: Handle both the plaintiff's and the defendant's products. In our prayer we are asking that this Court amend its judgment doing away with this possibility of confusion that the defendant contends is possible because of the fact that the judgment is not clear and distinct as to what he can and what he can't do. We think the judgment is, if properly interpreted, perfectly clear in that he should not use the name Steccone in any manner unless he differentiates his product from Morse-Starrett Products Company squeegees in a fair manner, not in the manner he has done in Exhibits

2, 3 and 4. We think definitely this is a violation of the Court's judgment.

Also in the memorandum of authorities served and filed by the defendant he states no injunction was issued. I would like to refer to the case of Denver-Greeley Valley Water Users Association, et al., vs. McNeil, et al., 131 Fed. (2nd) 67. The Court stated:

> "It is well settled that disobedience of any lawful and valid judgment, decree, or order of a court acting within its jurisdiction of which one has notice or actual knowledge constitutes contempt of court."

Also, Western Fruit Growers vs. Gotfried, 136 Fed. (2nd) 98, in which the Court said:

> "However, if a court has jurisdiction over both parties and the subject matter, an order must be obeyed so long as it remains the order of the court."

We contend that this judgment is an order of this Court.

In re Sylvester, 41 Fed. (2nd) 231, the court stated:

> "Courts' orders must be precisely and promptly obeyed. A person who fails so to obey a court order is guilty of a technical contempt and is punishable therefor."

Mr. Steccone's excuse for all this is that he advised with his counsel to determine just how far he could go, and atached to his affidavit are letters

from his counsel, Exhibit "A" and Exhibit "B." I haven't had an opportunity to read all of them as yet, but therein counsel attempted to interpret this Court's judgment and interpreted it far more liberally toward Mr. Steccone, defendant herein, than we think is proper. This is no excuse for such contempt. I would like to cite to your Honor the following authorities:

U. S. vs. Goldfarb, 167 Fed. (2nd) 735, which states:

> "Even advice of counsel is not a defense to an act of contempt, although it may be considered in mitigation of punishment."

Also, Bigelow vs. RKO Radio Pictures, et al., 78 Fed. Sup. 250, the court said:

> "In every case, however, these officials were merely following the advice of their attorneys. While their attorneys may have acted imprudently in giving opinions with reference to the views of this court, and while counsel may have arrived at erroneous conclusions in so doing, the reliance of these respondents upon counsel for the interpretations of a legal document was reasonable and natural. Although it is no doubt true that in a civil contempt proceeding neither advice of counsel nor good intentions can sterilize conduct otherwise contemptuous."

We submit, your Honor, that these advertisements that are continually being published by the defendant are contemptuous of this Court's order. As a matter of fact, after the first circular, Exhibit

1, was directed to my attention by the Morse-Starrett Products Company, I telephoned Mr. Peckham and complained bitterly about this particular advertisement. He said he would take the matter up with Mr. Steccone and if there was anything improper in that advertisement it would be corrected. Evidently Exhibits 2, 3 and 4 are the attempt at a correction, which we still contend violates this Court's judgment; and we submit the defendant should be held in contempt, and that he should be assessed pecuniary damages in the amount of $1,000.00 and counsel fees in the amount of $500.00.

Mr. Naylor: If the Court please, I would like to file at this time an affidavit of the defendant, Ettore G. Steccone; affidavit of E. P. Gilsdorf, and Memorandum of Points and Authorities in Opposition to the Order to Show Cause, with the Court's leave.

These cases, as your Honor is well aware, always present difficulties. I think that is apparent in your Honor's thinking in the type of judgment which was entered herein, because the judgment is a type which contains absolute prohibitions, which we think have been satisfied in the material this man has used, but in addition it had the permissive aspect, and this permissive aspect apparently is the thing which gives plaintiff's counsel difficulty. I don't see any reason for such difficulty, and I don't see any reason for the scanning of the minutia of the man's advertising such as represented by those things which were subject to his control.

I would like first to dispose of Exhibits 1 and 5,

appearing on the petition for the order to show cause. They can be disposed of upon the strength of the affidavit of Ettore Steccone which was filed this morning with the Court.

First let it be noted that the most that the plaintiff has been able to show here is an allegation upon information and belief, if you will, that such party as Sterling Sanitary Supply Corporation are agents or agents and distributors of defendant Ettore Steccone. Now, in refutation of that Ettore Steccone denies that these people are anything more than mere jobbers and dealers, and that distinction is important, your Honor, for this reason. A judgment such as we have here usually reaches the agents of the defendant, or the party sought to be enjoined, but it will not extend as far as independent dealers who are acting independently of the defendant. The affidavit of Ettore Steccone shows that with respect to Sterling Sanitary Supply Corporation, that corporation merely buys in quantity lots from him at a discount commensurate with the quantity and jobs and sells his products as an ordinary dealer in this merchandise. Now that, I think, squarely meets the allegation upon information and belief asserted by the plaintiff in this action on the petition for order to show cause.

The affidavit of Ettore Steccone further shows that, with respect to Exhibit 1, he had no prior knowledge of the issuance of that particular piece by Sterling Sanitary. And he shows a price list, or discount sheet, which is Exhibit "F," on his affidavit filed this morning, from which the material

embraced in Exhibit 1 was taken. That price list appears to be dated October 1, 1948. It is therefore evident from a comparison of those two exhibits only that Sterling Sanitary Supply Corporation used the material of the 1948 price list in the making up of the piece which is here complained of by the plaintiff as Petitioner's Exhibit 1.

That, I think, coupled with the other aspects of his affidavit, clearly shows that there was no connivance. There was no request that we let Sterling insert the item or use this material. Obviously, Sterling was using such material as it had on hand in the preparation of it.

With respect to Exhibit 5, which contains the advertisements of three parties, that being the copy of the Window Cleaner, the affidavit of Steccone shows that he was not informed that Sterling Sanitary Supply Corporation was going to insert that ad. Here again we have an independent act of a jobber or dealer making up some copy with respect to the products he sells. And on that particular proposition, in a contempt proceeding it has been held that, in Tubular Heating & Ventilating Co. vs. Mt. Vernon Furnace & Mfg. Co., et al., 2 Fed. (2d) 982, at 985:

> "The actions of the dealer in Philadelphia were not the actions of the defendants, and the defendants had no control over him."

Now, there is a reason for that, and it goes back much further. The courts have never in trying an original action for trade-mark infringement, been

prepared to bridge the gap between the manufacturer with a particular mark and his several dealers in the trade; and the authority for this is a long line of cases, of which Coates v. Merrick Thread Co., 149 U.S. 562, 573; 13 Sup. Ct. 966, is the lead-off case, with others coming down the list to Armour & Co. v. Louisville Provision Co., 283 Fed. 42, a Sixth Circuit case.

That rule applies to all of the several ads contained in the Window Cleaner. They are inserted by independent jobbers, independent dealers, over whom Steccone has no control whatsoever; and he therefore accepts no responsibility for them, and justly so.

With respect to the three other pieces, namely, Exhibits 2 and 3 and 4 on the petition, I would like to acquaint the Court with this continuity of events so that it will be plainly seen that every reasonable effort has been made to comply with your Honor's judgment in this case.

When your Honor handed down your opinion in October of last year, Mr. Steccone and Mr. Peckham called at my offices and asked if I would review that opinion, and particularly the authorities which your Honor had cited on the concluding page, some five authorities, to determine what plans Steccone would have to make for the future with respect to his markings on his article as well as his advertising. I prepared, after studying your Honor's opinion and reading and briefing the five authorities which your Honor had cited at Page 20 of the Memorandum, presumably as a guide to counsel as

to how the judgment to eventually come could be complied with—I prepared a careful opinion to Mr. Steccone. That opinion appears, copy of it at least, as Exhibit "A" of Steccone's affidavit of today.

In that a conscientious effort was made to eliminate the difference between those things which were expressly forbidden and prohibited by this defendant and those that were permissive. Because surely there is permissive language in the judgment. Thereafter, your Honor entered the Court's judgment in January, 1950. Mr. Steccone and Mr. Peckham again returned with a copy of your Honor's judgment, because in the opinion of November 8, Exhibit "A," I had stated to them that it would be advisable to return when the exact nature of the findings, conclusion and judgment to be approved and entered would be ascertained. They then returned and asked specific questions and a set of specific replies were prepared. These are found in Exhibit "B," an opinion of February 8th, shortly after the judgment was entered.

In those opinions an effort was made to set up the signals for Mr. Steccone in his future conduct, both as to things prohibited and things permitted.

Thereafter Mr. Steccone submitted written request for a supplemental expression of opinion, which likewise appears as Exhibit "C" on his affidavit filed this morning, along with Exhibit "D," a piece of advertising material. Then a reply was given on that as Exhibit "E."

That is the story with respect to what the defendant has done in, as I say, a conscientious effort

to abide by this Court's judgment and do the things which his counsel and he understood the Court wanted done.

Now as we come to your Honor's precise language in the judgment we find, as I said before, certain permissives, certain permissive aspects, and certain things which are absolutely forbidden. In our Memorandum of Points and Authorities, at Page 5, we have laid an apposite chart to show the language of his Honor's judgment and to characterize in apposition the conditionals and permissives, and endeavored to set up with respect to Exhibits 2, 3 and 4 those things for which the defendant here admits responsibility in particular relation to the judgment language.

Now, it was thought upon construing your Honor's judgment in this case, because of the language of the proviso therein, "Provided, however, that defendant may make, advertise and sell squeegees as the products of Steccone Products Company, subject to the accompanying explanatory material," that that was recognition of the man's right to continue using the trade style "Steccone Products Co." the proviso being that he accompany it by such other explanatory material as would clearly identify him as distinguished from Morse-Starrett Products Co.

In the very next permissive the proviso states, "Provided, however, that defendant may make, advertise and sell squeegees as products of Steccone Products Co. or as defendant's products."

Now, who is the defendant? The defendant is

Ettore Steccone. Therefore, it was concluded not only could he use "Steccone Products Co.," but he could identify himself by the use of his full name, Ettore Steccone, provided he did so fairly; and we submit Exhibits 2, 3 and 4 of this petition indicate a fair use of it when the whole piece of material is examined.

And again it was felt that the accompanying material, the accompanying explanatory material, had to be, as your Honor advisedly chose the words, "Sufficient to distinguish the one product from the other." Now we did not, and I will state this frankly to the Court, we did not treat your language, "sufficient explanatory material," as being a synonym in the well-established rule in explanatory phrases, and there was a reason for that, the distinction being this:

Explanatory material, as we understand the authorities on it, refer to the whole environment in which the particular material is used. The address is important. The trade name is important. Appearance is important. Any secondary trademarks, such as "Steccone Master," is an important factor in contributing to the sum total of "sufficient explanatory material." The explanatory phrase, on the other hand, is that age-old device which the courts adopted many years ago of requiring one to say, "not connected with." "Not connected with." And then to state the name of its original party, or first party to use the mark, or whatever it may be. There is that distinction between "explanatory material" and "explanatory phrase."

But in addition, the five authorities on which your Honor relied and which you cite at Page 20 of your memorandum did not call for a norm in an explanatory phrase as distinguished from explanatory material.

As stated in our memorandum of points and authorities, two of those cases, which were of a vicious type where somebody had been a Johnny-come-lately to the business and had no antecedent history such as this defendant, were estoppeled, that they were not to use it. In three cases no such requirement was made, and as in the Chickering case, the court ordered a particular set-up of trade name and a particular use of the trade style of Chickering Brothers.

In the other case, which I think is a fair guide of what Steccone has done here, they required that the defendant use his full name, such as Ettore Steccone; provided, that the two names, that is, the man's name and surname, be displayed in the same type, the same font of type, the same color and with equal prominence.

With those guides in mind, when we come to the exhibits on the petition, particularly Exhibits 2, 3 and 4, we find that Ettore Steccone has done precisely that which was required in the last case cited in your Honor's memorandum. Not the last case. That was the Dougherty case. The whiskey label case. For we find there "Ettore Steccone" in type of constant size, same font, with equal prominence. The name is accompanied by his secondary mark, which is "Master," accompanied by the word

"squeegee." Obviously Morse-Starrett has nothing comparable to "Master." Therefore, "Master" is a contributing factor, being in the nature of explanatory material used in combination with the defendant's own name, not the name "Steccone" per se.

When we come to Exhibit 3 we find a similar set-up in that "Ettore Steccone" is again displayed in type of constant size, same font, appearance and prominence. And there again there is a host of accompanying explanatory material under the main issue in the matter in which there is an existing patent which he has relating to the squeegee construction—not the one which was involved in the earlier case and held invalid, but another. And there is a series of illustrations on it, in general pointing up his business and not the business of Morse-Starrett.

In Exhibit 4, "Steccone Products Co."—again using his name. "Manufacturers Ettore Steccone Window Squeegees"—again using his name. It is repeated later on in two instances at the foot. One engaged in a puffery of the type Buick uses: "When better squeegees are made, Ettore Steccone will make them," to point up his particular argument.

We submit that on the showing here the defendant is not guilty of any contemptuous attitude toward this Court's judgment. I think in all fairness, considering the fact that he did not ignore the advice of counsel but sought it and sought it

in detail, and that is reflected in the expression of the opinion we have. We don't offer that as an excuse of conduct that is otherwise contemptuous, but I say this, that if a man faced with a judgment permissive in nature consults his counsel and his counsel gives what appears to be a faithful interpretation of the permissive language, that the Court should come rather cautiously to the harshness of a contempt ruling.

Perhaps some other approach should be made to it. And that was suggested to me by a remark made by opposing counsel that plaintiff is here asking that this Court amend its judgment to remove all possibility of confusion. If that is plaintiff's position, I submit a contempt hearing is not the way to do it, and the authorities support us on that, because very early the United States Supreme Court laid down this rule in Terminal Railway Association vs. United States, 266 U.S. 17, to the effect that "in contempt proceedings for the enforcement of a decree, the meaning of that decree will not be expanded by implication or inference beyond the fair meaning of what was intended to be prohibited in the light of the issues."

To the same effect is the very recent case in New York, One-Two-Three Company, Inc., vs. Tavern Fruit Juice Co., Inc., 54 Fed. Supp. 574.

The Court: Have you those two cases in your memorandum?

Mr. Naylor: Yes, I have, your Honor.

There is a further tip-off that that may be plaintiff's intent and purpose rather than this contempt

when we refer to items 3 and 4 of plaintiff's prayer on the petition. They say, herein this Court is asked to "enter a further order enjoining defendant from use of the name 'Steccone' in any manner whatever in connection with squeegees and parts therefor"; and, that the defendant "instruct, in writing, his agents and distributors from in any manner using the name 'Steccone' in connection with the advertisements and sales of squeegees and parts therefor."

Well, I submit that the approach to that is not through contempt proceedings. I respectfully submit that on those authorities if the plaintiff is dissatisfied with your Honor's judgment there is appropriate procedure; but it most certainly is not in a contempt proceeding; and we do not think there is any merit in picking up the minutia of what Steccone has done in his advertising and ask to present the matter before the Court again in the hope that through contempt some amendment of the judgment may perforce come about.

So with those remarks we submit that there is no room for a contempt ruling in this particular proceeding.

The Court: All right.

Mr. Hursh: May it please your Honor, I see Mr. Steccone present in the courtroom. I would like to ask him a few questions if I might.

The Court: Have you any objection?

Mr. Naylor: I have no objection.

The Court: Go ahead and ask him.

Mr. Naylor: Will you take the stand, Mr. Steccone?

ETTORE G. STECCONE

defendant herein, called as a witness; sworn.

Direct Examination

By Mr. Hursh:

Q. What is your full name, sir?

A. Ettore G. Steccone.

Q. Mr. Steccone, I show you Exhibit 1 to the petition for order to show cause, which is a circular which advertises Steccone Master Squeegees. That was sold by Sterling Sanitary Supply Company?

A. Yes.

Q. Who had that circular printed?

A. I don't know. First time I saw the paper was when Mr. Peckham called me and told me that. "What do you mean?" He says—I can't recall the name—"Mr. Hursh called me and told me you published something, some kind of paper." I said, "No, this is a surprise to me." He said, "Do you know who could have done it?" I said, "No, I don't have no idea." He said, "See if you can get a copy." So I believe it was on—well, I am not sure, but this man came and brought one of those papers that are published in New York and where I saw that ad. Then I wrote to Sterlings and asked them to send me three copies, I wanted to see what he published; and one I gave Mr. Peckham and one I kept myself. But the only thing I knew about that ad was when Mr. Peckham called me up. And

(Testimony of Ettore G. Steccone.)

the second copy I seen, it—I don't know if it came through the Window Cleaner, they sent it to me or they send it to me, I don't know which, but I seen it after that, and after several weeks I received copy from Sterling. But I didn't have no knowledge whatsoever and Sterling never told me about advertising or anything.

Q. Do you contribute any money to Sterlings for advertising your squeegee?

A. No, sir, never a cent. They didn't ask it and I didn't give it.

Q. After you saw this advertisement did you contact Sterling and tell him that it was an improper advertisement of your product?

A. I didn't say that because I thought they were all right. I don't believe I considered that in that issue. I thought that was done and they wouldn't repeat that.

Q. Have you ever contacted any of your dealers, distributors or jobbers to tell them about this Court's decision at this trial?

Mr. Naylor: If the Court please, I am obliged to object because it improperly includes the jobbers, dealers——

The Court: Yes.

Mr. Hursh: I will change it.

Q. Did you ever notify your dealers with respect to the judgment?

A. I haven't no particular dealer. I sell to everybody. I send my price list to anybody to buy. But I haven't got a particular party that has more

(Testimony of Ettore G. Steccone.)

power than others, because I have no distributor to say, "Will you sell squeegees in this zone or that?" Everybody send an order, I got a discount sheet and I follow that, and then I haven't got no particular party to sell in certain territory.

Q. Who is this gentleman E. P. Gilsdorf?

A. Gilsdorf sells my product, but just to order.

Q. He is just a straight salesman?

A. Yes, but the order come to me. Solicit. But he don't sell my squeegee. He take order for me. Of course he doesn't do any advertising or anything like that. What I mean, I haven't a distributor, you know, handle material, handle the goods. I haven't got such a thing. Gilsdorf just takes order.

Q. How does Sterling purchase from you?

A. He buy according to my price list.

Q. He is not a distributor or agent of yours?

A. No. He buy. I got—I haven't got such thing. He buy according to my price list. If he send me large order, I give him according to the discount going. Suppose he got discount two gross, I give him discount two gross; suppose he got discount five gross, then I give him discount five gross.

Q. How do you deal with Pearl Brothers?

A. Same thing.

Q. Formula Products?

A. I never sold anything.

Q. Do you know whose squeegee rubbers are being advertised by the Formula Products of Newark, New Jersey?

(Testimony of Ettore G. Steccone.)

A. I never saw any squeegee. Might sell. Sell most all persons.

Q. From that advertisement in Exhibit 5 you can't tell whose squeegee rubbers they are? They could be yours?

A. They could be mine. I don't know.

Q. Tell me, have you since January 11, 1950, changed the markings or stampings on your squeegee handles in any manner? A. No, sir.

Mr. Naylor: If your Honor please, I would like to object to any line of examination such as this because this contempt proceeding is founded upon five pieces of advertising matter, and there isn't a word concerning markings in the papers.

The Court: I haven't examined them carefully, but that is the impression I have, it is founded on that advertising.

Mr. Naylor: Strictly that advertising, your Honor.

Mr. Hursh: In Paragraph 17 of the petition, the last sentence states here that: "That said advertising circulars, Exhibits 2 and 3, disclose the identical use of the name 'Steccone' on defendant's squeegee handle which was originally charged in the complaint to constitute unfair competition by the defendant and which this Court held to be unfair competition in its opinion and judgment. That the said continued use of the name 'Steccone' by defendant on his squeegee handles is in violation of this Court's judgment and constitutes unfair competition by defendant against plaintiff."

(Testimony of Ettore G. Steccone.)

That is a direct issue.

The Court: I will allow the question.

Mr. Hursh: What is that?

The Court: I will allow the question to be answered.

Mr. Hursh: I think it is proper, your Honor.

Q. What is your answer to the question?

A. You have to repeat the question.

Q. Since January 11, 1950, have you made any changes in the stampings or markings on your squeegee handles? A. No, sir.

Q. Is that exactly the same as it was prior to the entry of the Court's judgment?

A. Same.

Mr. Hursh: Those are the only questions I have of Mr. Steccone.

Mr. Naylor: No questions. Oh, I do have one question. I wish you would take the stand again. Mr. Reporter, may I have the last question by Mr. Hursh read back?

(Thereupon, the question was read by the reporter.)

Cross-Examination

By Mr. Naylor:

Q. Have you made any changes in the markings on your squeegees themselves? A. None.

Q. Or the rubber?

A. On the rubber I have, yes. Put Ettore Steccone.

Q. In other words, the squeegee rubber bears

(Testimony of Ettore G. Steccone.)

your full name, Ettore Steccone? A. Yes.

Q. In other words, the head or handle bears a stamp which shows "Steccone Products Co., Master, Oakland, California," arranged in a circular, is that correct? A. That is right.

Mr. Naylor: That is all.

Redirect Examination

By Mr. Hursh:

Q. Is there any other legend on your squeegee rubbers that distinguishes that rubber from the product of the Morse-Starrett Products Company?

A. No. I got my full name.

Mr. Hursh: That is all.

Mr. Naylor: That is all.

(Witness excused.)

Mr. Hursh: May it please your Honor, in answer to some of Mr. Naylor's statements I might say this, that at the conclusion of the trial plaintiff hoped it had been successful in the litigation, and that this type of advertising campaign, if permitted by the defendant, the plaintiff considers itself anything but successful.

Mr. Naylor stated he studied the authorities that appeared in one paragraph of your Honor's opinion, then he starts splitting hairs with respect to whether explanatory material and explanatory phrases are exactly the same. He interprets these five decisions that your Honor mentioned and

selects the most liberal ones in favor of his client, stating that there is a distinction between explanatory material and explanatory phrases.

I say this is merely a fiction, your Honor; that if the defendant wanted to be fair about this he would have considered all these authorities and he would have put an explanatory—I don't know whether you call it a material or a phrase, that has no connection with Morse-Starrett's Products Company. You can see from the Exhibit 5, the Window Cleaner for March-April, 1950, the value of the name "Steccone." "Genuine Steccone Rubber." Everybody uses it in the trade. You can't tell whose product it is. It has come to mean a good product. And it must be remembered the only person, or only entity that ever used the name "Steccone" as a trade-mark was the corporation. That was established during the trial, that the corporation had been the user and owner of that trademark and has a right to it.

The Court: I remember clearly what was in my mind at the time I rendered that decision. It is just as stated there, to the effect they could use the word "Steccone" in connection with some other word, provided they made it clear that it was not the product of Morse-Starrett Company. That was the idea that was in the back of my mind, that your people had gained a secondary right, secondary meaning of the word "Steccone."

Mr. Hursh: That was our interpretation of it, your Honor. I don't think they have followed that.

The Court: Personally, I feel—I am going to

look through them. I haven't read them over. My feeling now is those Exhibits 2, 3 and 4 are a palpable attempt to do as men do when they are selling prospectuses of stocks: put in something they don't want set down in small type at the bottom. I don't think even the language of that is the distinguishing language I wanted put on this squeegee and put in the advertising matter.

Secondly, Mr. Steccone has just admitted he hasn't changed any of it either on the squeegee or the handles, never put any explanatory remarks on there at all.

I will look it over, but I feel he hasn't in good faith attempted to comply with the order.

Mr. Naylor: If the Court please, may I correct one impression I think your Honor has, and that is that there has been no change in the markings.

The Court: He said there hadn't been.

Mr. Naylor: There has been as to the squeegee rubbers themselves.

The Court: But he put Ettore Steccone.

Mr. Naylor: He put his full name on the squeegees.

The Court: Yes, I have that in mind, but I don't think that is a complete change. I will take it under submission.

Mr. Hursh: Thank you, your Honor.

CERTIFICATE OF REPORTER

I, Kenneth J. Peck, Official Reporter, certify that the foregoing transcript of 29 pages is a true and

correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ KENNETH J. PECK.

[Endorsed]: Filed Sept. 11, 1950.

[Title of District Court and Cause.]

MEMORANDUM OPINION

I find that exhibits 2, 3 and 4 attached to the affidavit of Leon Paul in support of plaintiff's claim that the defendant has not complied with the judgment of this Court are violative of that judgment. I do not make the same finding with respect to exhibits 1 and 5 attached to said affidavit, because the evidence indicates that these publications were not made by defendant but were made by dealers over whom this Court has no jurisdiction.

See Tubular Heating & Ventilating Co. v. Mt. Vernon Furnace & Mfg. Co., 2 F. (2d) 982, 983.

I further find that defendant has not complied with the order of this Court requiring him to indicate on the squeegees and the handles thereof manufactured and sold by him that they are not the product of Morse-Starrett Products Co.

Accordingly it is Ordered that the defendant forthwith cease and desist from printing, circularizing or using in any manner whatsoever the said exhibits 2, 3 and 4, or substantial copies thereof, and furthermore that he forthwith cease and desist from manufacturing and selling any squeegees or handles

thereof marked with the word "Steccone" used alone, or in connection with other words or symbols which do not clearly indicate that they are not the product of the Morse-Starrett Products Co.

It is further Ordered that defendant pay to plaintiff a reasonable attorney's fee, to wit, the sum of $500.00 for services of plaintiff's attorneys in the commencement and prosecution of said contempt prceedings.

Dated: July 31st, 1950.

/s/ HERBERT W. ERSKINE,
United States District Judge.

[Endorsed]: Filed July 31, 1950.

In the United States District Court, Northern District of California, Southern Division
Civil Action No. 27081-E

MORSE-STARRETT PRODUCTS CO., a Corporation,

Plaintiff,

vs.

ETTORE G. STECCONE, an Individual, Doing Business Under the Firm Name and Style of STECCONE PRODUCTS CO.

Defendant.

ORDER FOR WRIT OF EXECUTION

The order to show cause for contempt having come on for hearing on July 26, 1950, on motion of

plaintiff, and the Court having entered on July 31, 1950, its order awarding reasonable attorneys' fees in the sum of Five Hundred Dollars ($500.00) for services of plaintiff's attorneys in the commencement and prosecution of said contempt proceedings, and it appearing to the Court that said Order of July 31, 1950, has not been complied with in that the said sum of Five Hundred Dollars ($500.00) has not been paid by plaintiff to defendant, it is hereby ordered that a Writ of Execution be issued by the Clerk of this Court to the Marshal of this Court instructing said Marshal to levy upon the personal property of defendant for the satisfaction of said order awarding said attorneys' fees.

/s/ HERBERT W. ERSKINE,
United States District Judge.

Dated: October 6th, 1950.

[Endorsed]: Filed Oct. 6, 1950.

[Title of District Court and Cause.]

MOTIONS AND NOTICE OF MOTIONS TO RECALL, QUASH OR STAY WRIT OF EXECUTION, AND FOR ENTRY OF FINAL JUDGMENT

To Morse-Starrett Products Company, a Corporation and plaintiff above named, and to Messrs. Mellin, Hanscom & Hursh, Oscar A. Mellin, Le Roy Hanscom and Jack E. Hursh, its attorneys:

You and each of you, will please take notice that on Friday, October 13th, 1950, at 11 a.m. o'clock, or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court, in the United States Post Office and Courthouse Building, Seventh and Mission Streets, San Francisco, California, defendant will move this Honorable Court as follows:

1. To recall or quash or to stay the writ of execution heretofore issued herein, and

2. To approve a form of judgment and to thereafter direct and enter final judgment in this proceeding.

The grounds for these several motions are as follows:

A final decision or judgment within the meaning of the United States Code, Title 28, Sec. 1291, and according to the procedural requirements laid down by the appropriate Federal Rules of Civil Proce-

dure, and the local rules supplemental thereto, has not as yet been entered in this proceeding; and, no final decision or judgment having been entered, the issuance of writ of execution is premature and therefore improper.

Dated: October 9th, 1950.

NAYLOR and LASSAGNE,

JAS. M. NAYLOR,

By /s/ JAS. M. NAYLOR,
Attorneys for Defendant.

ORDER SHORTENING TIME

Good cause appearing therefor, it is hereby

Ordered that the foregoing motion be and the same is hereby set for hearing before the above-entitled Court at 11 a.m. o'clock, on October 13th, 1950.

/s/ MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Oct. 9, 1950.

[Title of District Court and Cause.]

MOTION TO RECALL, QUASH OR STAY WRIT OF EXECUTION, AND FOR ENTRY OF FINAL JUDGMENT

Tuesday, October 23, 1950

Appearances:

For the Plaintiff:

MELLIN, HANSCOM & HURSH, by
JACK E. HURSH, ESQ.

For the Defendant:

NAYLOR AND LASSAGNE, by
JAMES M. NAYLOR, ESQ.

The Clerk: Morse-Starrett v. Steccone, motion to recall, quash or stay writ of execution, and for entry of final judgment.

Mr. Naylor: Ready.

Mr. Hursh: Ready.

Mr. Naylor: If the Court please, there are certain factual recitals which would be essential to your Honor's understanding of our position in this matter which unfortunately I did not have set up in affidavit form because opposing counsel's memorandum wasn't served until approximately four o'clock yesterday afternoon. I simply had not had adequate time to get those out.

This, as Your Honor will recall, is a motion to quash, recall or stay the writ of execution and for entry of a final judgment in the case of Morse-

Starrett v. Steccone. The position taken on behalf of the defendant Steccone in the motion is that the memorandum opinion as entered by the clerk of this court on July 31 was not a final order of an appealable nature. The reason that view was taken is the fact that under the R.C.P. rules and local rule No. 5, it was not felt, nor is it now felt that the memorandum itself meet all of the customary and conventional practices of this district with respect to its being a final order.

I would like to cite a chronology of dates from our own diary which I will tender as an offer of proof in that regard and supply affidavits or such other proof as the Court may direct to indicate what our understanding has always been from the inception, namely, July 31, down to date.

It so happens that I was away on vacation when your Honor handed down your memorandum opinion. I returned here on August 15 to find the memorandum, and then I learned that Your Honor was on vacation, and I understand Your Honor's vacation terminated about September 11. And on September 18 I left for the east on a deposition trip in another case, namely, Wolfe v. National Lead.

Despite my own personal absence from the office the matter has not been unattended to, as the diary notes I want to recite will amply illustrate, and as I said before, those entries illustrate our understanding of what Your Honor intended by the memorandum opinion from the standpoint of finality.

The diary shows that on August 2 Mr. Lassagne, who is my partner, consulted with Mr. Steccone

relative to the memorandum opinion and received from him verbal instructions to appeal.

On August 3, Mr. Neil of our office had two phone conversations with the clerk concerning the nature of the entry which had been made. And at that point, in all fairness to the clerk and in all fairness to ourselves, I would like to say that there commenced an understanding in that conversation and subsequent conversations with the clerk that your Honor's memorandum opinion wasn't regarded by the clerk as a final order.

We asked at that time of the deputy if they would be so kind as to make a notation to advise us promptly should any further entry be made on his docket with respect to a final order in the particular matter.

On August 4 there was a report on the memorandum opinion, written report, and in that it was asserted that there was need for entry of judgment to open the appeal period with respect to His Honor's memorandum opinion.

The Court: Who made that report?

Mr. Naylor: Mr. Lassagne made that report in my absence.

The Court: I see.

Mr. Naylor: On August 4 Mr. Lassagne declared Steccone's intent to appeal to Mr. Hursh in a phone conversation, and I mention that merely to indicate the chronology of these events and the intent which we have had on our side, in accordance with the understandings we have had with the clerk's office and our understanding of the law.

On August 31 I personally came out to the court and checked the nature of the entry which had been made with respect to Your Honor's memorandum opinion. I have here and I recite it in the motion, or the memorandum, the entry as I then understood it. Now, Mr. Hursh has called attention in his reply memorandum here to the fact that there are actually two entries on July 31. At no time was either Mr. Lassagne or Mr. Neil or myself informed that there was an entry above the line which began: "Filed memo opinion of court that defendants cease and desist from circularizing certain printed circulars; manufacture and selling improperly marked squeegees and handles and pay plaintiff's attorney $500 fees."

I would like to say and I repeat emphatically, at no time I have checked this finding with Mr. Lassagne or Mr. Neil did we have any understanding that there was a double entry there. Again, I have had time to rationalize that to the extent of determining whether that would have altered our course. I am not certain yet whether the first of the two entries of July 31 had a significance because of certain other factors to which I will allude, but the fact remains is we were just not given the understanding that the earlier entry was there. We relied simply on the information that the memorandum opinion had been filed and was—the August 1 entry is that a copy of the opinion had been mailed to counsel.

On September 5 there was a further report to Steccone that there was no further entry beyond

the memorandum opinion and there was a detailed procedure under local rule 5 on the settlement of findings, conclusions and judgment, and alternate procedure under our CF 52-B with reference to the amendment of the findings, and R.C.P., 59-E to alter and amend the judgment.

On September 19 there was still a further report, no further entry beyond memo, and set the matter ahead for October 5 to call plaintiff's counsel to ask whether they proposed to submit a form of judgment; if not, then we were to prepare and submit one of our own under local rule 5.

On October 3 Mr. Neil of our office made a phone call here to the court and discussed the status of the docket as of that date and gathered the understanding that there was no change.

Now, I want to be perfectly clear with the clerk's office. I have been practicing here twenty years and have not had the slightest difficulty, find it a very fine clerk's office, and at the present time, in all respects. I think to rationalize the understanding that we got we must take the sequential entries on his docket and say that whoever inquired would be referred to the last entry, which shows in this particular case ahead of context in that it recited the memorandum opinion was filed July 31. Normally I think in fairness the order would come after the memorandum.

On October 9 I came out again, made a trip to the court to check the clerk's entry on the memorandum opinion, and as I say, received nothing to indicate that there had been a greater finality than

that which existed on July 31 when that memorandum opinion was entered.

Now, there was a subsequent development on this record which has, I think, a direct bearing on the understanding which apparently the clerk was harboring and certainly the understanding that we were under, namely, Your Honor's order of October 6, which was for a writ of execution. That order, as Your Honor will recall, recited:

> "The order to show cause for contempt having come on for hearing on July 26, 1950, on motion of plaintiff, and the court having entered on July 31, 1950, its order awarding reasonable attorneys' fees in the sum of $500 for services of plaintiff's attorneys in the commencement and prosecution of said contempt proceedings, and it appearing to the court that said order of July 31, 1950, has not been complied with in that the said sum of $500 has not been paid by plaintiff to defendant, it is hereby ordered that a Writ of execution be issued by the clerk of this court to the marshal of this court instructing said marshal to levy upon the personal property of defendant for the satisfaction of said order awarding said attorneys' fees."

Now, we submit, Your Honor, that if the original memorandum opinion as treated by the court, as treated by the clerk in his understanding of the court's intention was in fact a final order, then we have no explanation of why it was necessary on

October 6 to enter an order specifically directing the clerk to do that which would have already been contained in the final order if the earlier entry was in fact a final order.

Now, as I said to Your Honor in chambers, when this motion was set on Your Honor's calendar, and I will repeat it here, we have no intent to dally with the court in this matter. There was a declared intent on Steccone's part to appeal from Your Honor's memorandum opinion, if that be treated as a final order for one specific purpose only; namely, to test the propriety of a contempt order, clarifying or treating an original final judgment so as to amend it or to amplify it or to do any of the things which cast a different light on it. I submit in good faith to Your Honor that that was discussed at great length with Steccone, and there is some Supreme Court law which indicates that the ground for appeal would be there, and so it was the intent at all times after that was handed down to take that appeal, and so that is the reason why we are here today, not to have the door slammed in our faces on the right to appeal, to test the correctness of that particular memorandum as it dealt with the original judgment in the case.

The decisions which we have cited and the decisions which our opponents have cited stand for the proposition that the finality of an order always involves the question of the intent of the district judge.

There is a case on page 4 of the defendant's

memorandum for that proposition. We have some in our own memorandum.

> "The question of finality of a decision is not one of form but one of substance based primarily on the act and intent of the district judge."

Now, we submit that it was certainly not our understanding from a reading of the memorandum opinion and the subsequent treatment of it by the clerk, and the subsequent issuance of the order for writ of execution that the original memorandum was intended to be a final order, regarding it in the light of local rule 5 and the practice which has prevailed or of implementing an order of that kind or decision of that kind by findings, conclusions, and a judgment.

We have on this motion tendered to Your Honor a motion—I mean, a form of findings, a form of conclusions and a form of judgment which we think would make the type of final entry on the contempt proceedings which is contemplated by local rule 5 and the R.C.P. rules, as well as the established practice in this district, and it would be on the basis of such a final judgment that an appeal would lie.

As I said before, we are perfectly prepared to augment any remarks I have made here by affidavits if Your Honor feels they should be added.

The Court: I think I have them well in mind, unless you want to file an affidavit in order to have your position made clear in the record.

Mr. Naylor: I will be happy to do it if——

The Court: File a statement of the transcript which you just said.

Mr. Naylor: But I would make that as an offer of proof in that regard.

The Court: I was unaware of the fact that there was any provision for findings and conclusions of law in connection with the violation of a contempt proceeding, based upon an alleged violation of the order of the court. I really intended that order to be final; I didn't expect it to have any findings proposed upon that order. I want to say to you it may have been ignorance on my part, but I have been here only about a year and a half and this is the first contempt matter that has come before me and I didn't realize that it had to be supported by findings of fact and conclusions of law.

Mr. Naylor: Well, we didn't contact Your Honor in chambers, Your Honor was away on vacation, couldn't contact you in court, merely relied on what the court did, and as I say, with all fairness to the clerk, was the understanding we had, was that they were in fact waiting for something more, and then the order for the writ of execution. I don't know all of the circumstances behind that, but I gathered that Mr. Calbreath's office felt his record was not in such shape that he could go ahead and issue a writ of execution without such an order. As I say, it has been our intent to take these steps —as a matter of fact, I have here the whole format of the appeal papers, including even the application for supersedeas bond. They were all prepared in the early part of August and simply held in

status quo in the file awaiting such time as there would be a final entry such as would commence the running of a time for appeal.

The Court: Have you got a copy of the memorandum of the court there?

Mr. Naylor: Yes, I have.

The Court: I can't find it. I have it.

Mr. Naylor: You have one, Your Honor.

The Court: Yes.

Md. Hursh: Your Honor want a copy of it?

The Court: I have it right here. What have you to say?

Mr. Hursh: May it please Your Honor, there is one point that I don't think has been made clear to Your Honor and that is that on the court's docket of this case on July 31 there appears this notation:

> "Order defendants cease and desist from circularizing certain printed circulars; manufacturing and selling improperly marked squeegees and handles and pay to plaintiff's attorneys $500 fees."

Now, that is the way the court's docket is set up, and then after that entry on July 31 is the entry paper No. 66, I believe it is, memorandum opinion, filed, orders so and so. So as a matter of fact on this court's record there is an order of the court which is a final appealable order. Irrespective of whether the memorandum opinion, whether titled memorandum opinion or judgment or order or whatever it is entitled, irrespective of that question there is an additional order on the court's docket

that is a final, appealable order, and I mean that is all that determines the right of the defendant to appeal. Whether on the docket of this court in this case there is an order, that under the statute, 28 USCA 1291, is a final decision of the district court.

Our understanding of the court order was that Your Honor had completed his deliberation of our petition for contempt. There is nothing further for the parties to do with regard to that petition, there is nothing further for this court to do with respect to that petition. Every question that we had raised had either been granted to us in our prayer, the court either granted what we wanted or denied our prayer, but those things were not mentioned in the court's order. Naturally we presumed they were denied, this question of clarification of the court's previous decision, naturally we prayed for that, but the court did not grant us that relief, so it was denied, and there is no question about that.

I think the argument of counsel in that regard is purely fallacious. I do not believe there is any provision, and I have not been able to find anything in the—anything on the question where it is necessary for this court to enter findings of fact and conclusions of law and judgment in a contempt proceeding. I think the court's order holding contempt is surely sufficient and the order as entered even —we contend that even the entry of the memorandum opinion where the order is so clearly expressed by Your Honor as to what he considered to be the contempt of the defendant and what relief the plaintiff was to get, but we think counsel—first,

we think that that entry in and of itself was an entry which was appealable. But in addition to that entry there is this previous entry that very, very clearly determines the rights of the parties in this case and is appealable. And the defendants, if they desire to appeal, had their right to appeal, and that time has now expired. The only question now is whether the defendant can appeal in this case. What they want to do is to have this court perform an idle act of entering or making findings and conclusions of law in entering a judgment.

The Court: Has the time to appeal from that order, if it is to be regarded as the order of the court, has that expired?

Mr. Hursh: Yes, that is right, that has expired, and in addition to that, Your Honor, the rule provides as follows, the rule, the approved amendment to rule 77, subsection d, in the last sentence it states the following. We contend that irrespective of what this rule provides, we contend that the clerk, by giving to defendant's counsel, as he has admitted this morning, on August 2 the same as our office, we received a copy of the memorandum opinion, and we knew by receipt of that copy that there was an entry in the clerk's docket with respect to that memorandum opinion and order of court.

Now, the rule provides as amended:

> "Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for

failure to appeal within the time allowed, except as permitted in rule 73(a)."

Referring to Rule 73(a), we find that it provides as follows:

> "a. When and how taken. When an appeal is permitted by law from a district court to a court of appeals, the time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from unless a shorter time is provided by law, except that in any action in which the United States or an officer or agency thereof is a party the time as to all parties shall be 60 days from such entry, and except that upon a showing of excusable neglect based on a failure of a party to learn the entry of the judgment the district court in any action may extend the time for appeal not exceeding 30 days from the expiration of the original time herein prescribed."

So we contend that even if there has been a lack of the clerk to give notice of this prior entry on July 31, the time that this court could extend the appeal has also expired.

Now, turning to what a judgment is, rule 54(a) states:

> "Definition: Form. 'Judgment' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings."

So that no matter what it is called, if it is called an order or a judgment or a memorandum opinion, if it is an order from which an appeal lies, their time to appeal starts from the entry of that order. There is no question in this case that this court's memorandum opinion had appended thereto the court's order with respect to the contempt which finally determined all the issues of these parties on this application for order to show cause for contempt.

Your Honor ruled that the defendant, which is in contempt with respect to certain issues, was not in contempt with respect to other issues, and ordered that counsel fees for $500 be paid to the plaintiff by the defendant. There can be no question but that is a final order and an entry by the clerk in the docket and the appeal began to run. We understood it. I did not telephone Mr. Lassagne, I do not know the exact date, but I assume Mr. Neil was informed—I telephoned Mr. Lassagne, I asked him when Mr. Steccone was going to pay the counsel's fees. He said, "We are appealing." That was the extent of the conversation. Naturally, we presumed that they were appealing within the 30 days of the entry of the order.

The Court: What is rule 5?

Mr. Hursh: Rule 5 is quite a long rule, Your Honor. Rule 5 on entry of judgment and orders states—this is subdivision C:

> "The notation of judgments and orders in the civil docket by the clerk shall in all cases be made at the earliest practicable time. The

notation of judgments will not be delayed pending taxation of costs, but a blank space may be left in the form of judgment for insertion of costs by the clerk after taxation.

"(2) Orders and judgments under subdivision (A) and (B) of this rule will be noted in the civil docket immediately after the clerk has signed them. The clerk may require any party obtaining a judgment or order which does not need to be approved as to form by the judge, to supply him with a draft thereof."

(4)—skipping (3) which I don't think is applicable to anything here——

"(4) Every order and judgment shall be filed in the clerk's office. Where the clerk has requested a draft, or where the form of an order or judgment has been settled by the court, a copy must also be delivered to the clerk for addition to the civil order book.

"(D) Settlement of orders and judgments by the court. Within five days of the decision of the court giving any order which requires settlement and approval as to form,"

Now, we state that this order didn't require any such settlement and approval of the court because it was the court's final order.

"the prevailing party shall prepare a draft of the order or judgment embodying the court's decision and present it for approval to each party who has appeared in the action. Each party shall examine it at once, and if he

aproves, endorse with the words, 'Approved as to form, as provided in rule 5(D),' and append his signature thereto. Such endorsement shall not affect the rights of any party, but shall be considered only as an indication to the judge that the form is correct. If any party does not approve, he shall endorse with the words, 'Not approved as to form, as provided in rule 5(D),' specifying his reasons. The party proposing the order or judgment shall thereupon serve a copy upon each other party, and lodge the original and one copy with the clerk. Each party who disapproves the order or judgment shall have five days within which to serve and lodge with the clerk proposed modifications thereof. If all parties approve, or if no modifications are presented within said five days, the order or judgment, if approved by the judge, shall be signed and filed by him. If any proposed modifications of the order or judgment are presented as herein provided, the judge shall order such modifications made as he deems proper. If the attorney for the prevailing party fails to observe the above provisions, any attorney in the case may submit to the judge a draft of the proposed order or judgment.

"(e) Findings of fact and conclusions of law. Within five days after receipt of written notice of an opinion or memorandum order for judgment, the prevailing party shall prepare a draft of the findings of fact and conclusions of

law and lodge them with the clerk, serving a copy on the adverse party, who may within five days thereafter file with the clerk and serve upon the prevailing party his proposed amendments. If the adverse party proposes no amendments he may endorse his approval on the original draft, which may then be presented immediately to the judge for his signature."

We said that findings were not specified by Your Honor and are not necessary in this case. There was no rule provided, there has to be findings in a contempt proceeding unless Your Honor had specified at the bottom of his order, "Plaintiff shall prepare findings and present them in accordance with the rule of this court." They are unnecessary.

The Court: That was what I just said, I have never been aware that in a contempt proceeding it was necessary to file findings and conclusions of law, the same as you would on an original judgment.

Mr. Hursh: That is our understanding, too, that it is merely finding contempt or not finding contempt.

The Court: If I can I want to give any litigant before me a chance to appeal from my decision, but still I felt that this was just my final word on the subject; I had no idea that any findings should be filed and conclusions of law should be filed, or any special judgment filed. The order, as I read it, shows that on its face.

Mr. Hursh: I mean, that was our understand-

ing also, Your Honor, that the order was final, nothing further to be done. Your Honor had decided the question, contempt was found and nothing further whatsoever was left to be done here by the court or by the parties, and if an appeal was to be taken, the appeal was to be taken from the clerk as entered by Your Honor.

The Court: I made certain findings in this opinion, was improperly called an opinion; I made certain findings in it and then I go on and say it is ordered, accordingly it is ordered, it is further ordered that the defendant pay to the plaintiff, and so forth. Those are outright orders, but nothing in the memorandum to prepare findings and a judgment.

Mr. Hursh: That is right, there is nothing conditional whatever about Your Honor's order, completely final and determines the rights of the parties. We submit that the time to appeal started to run from the entry of that order by the clerk's office and it was properly entered by the clerk's office and the defendant had notice of the entry, and we state that the time to appeal has lapsed, nothing that can be done. We submit, Your Honor, that they had their right to appeal, the time has elapsed and nothing can be done to bring that right back, even under rule——

The Court: 73.

Mr. Hursh: 73, that the time has expired.

The Court: If the matter had come before me under an application under rule 73, and the time hadn't expired, I would grant them the extension.

Mr. Hursh: Which is just what happened.

The Court: That time expired too, hasn't it?

Mr. Naylor: That is correct, Your Honor. I would like to make just one or two comments here with respect to the clerk's notice of the entry of a judgment as required by rule 77b. We do not stand on the proposition that Your Honor has still some time left because the clerk did not send that which was specifically identified as a notice of entry of judgment. We cite that proposition for this law, namely, that as the cases indicate the fact that such a notice was not sent may be taken as an indication of the understanding of intent to be gained from the particular thing which was filed with the clerk, and that is our position precisely on that.

Now, in response to Mr. Hursh's observations that there was a decree, or a final decree, or a finality in that which is entered on July 31, that still doesn't explain why it was necessary for Mr. Hursh to come back and apply to this court for a writ of execution or an order directing the issuance of a writ of execution. If that which was already on file was the final thing that was to be sent to the clerk on the proposition——

The Court: May have been because the fact that the clerk——

Mr. Hursh: That is a fact, I talked to Mr. Calbreath and he said, "I have to have an order of court directing me to issue a writ of execution." In compliance with his request I brought the order and

filed it with the clerk's office and the writ was filed. No mystery about it at all.

Mr. Naylor: I am not trying to create a mystery. I am not informed, I wasn't there, it was ex parte, but the point I would like to make is this, a further point, that we have done considerable research on this question of final orders and we have been unable to find any authorities that say that contempt proceedings are strange proceedings in the sense that findings, conclusions and judgment would not be required, so if we take that understanding of the law, in reading local rule 5, and taking the custom of this court extending back over a period of time way beyond the present R.C.P rules, we come up with the proposition that Your Honor's memorandum opinion was the nature of a thing which under the rules required some implementation. And there is a further reason for that viewpoint, namely, that as we say Your Honor's memorandum opinion acts upon the original judgment in the case in a respect which brings a clarification of what Your Honor's original intent was, which is a further reason for delineation of the findings and delineations of conclusions and the eventual expression of Your Honor's final view in a judgment based on such a conclusion and findings.

And it seems to us that when this whole record is looked at we find not only in the memorandum itself, but—or in the clerk's attitude toward it, but in the attitude of counsel in coming back to get an order directing a writ of execution, that there is a

whole chain of things indicating that a plurality of people, including ourselves, had an understanding, a definite understanding as to what Your Honor's intent was, namely, that something further was to be entered before any time for appeal would start to run.

Now, I have disliked to bring in my own personal problem to the court, but our feeling of this is simply this: that if we are having the door shut upon us in a situation like this we will personally be out of pocket for the appeal up to the Ninth Circuit for clarification, and naturally, Your Honor, call it selfish what we will, we don't like to assume that burden, but we do not feel that that is an expense out of pocket of services or otherwise which can be visited upon this defendant.

The Court: I don't like to see anything like that visited on any attorney, although in the course of my practice of law I made mistakes and had to pay for them, either mistakes or things have been overlooked. We all, in busy practice, do that.

Mr. Naylor: That is true, we try to avoid them and minimize them.

The Court: That's why you should carry this insurance.

I will say frankly to you my intent was that that was the end of this thing so far as I was concerned. Now, you say there is a practice out here in this court with respect to preparation of findings, conclusions of law and in an order for contempt?

Mr. Naylor: I don't represent that I know of

any particular instance wherein in the past history of this court that this particular point has been raised and decided. That is not my representation, but my representation is that under rule 5 we take it for granted that when an order, when a decision has been reached, that it will be implemented in the manner in which rule 5 calls for, and the authorities that we have been able to run down don't characterize a contempt proceeding as any hybrid or peculiar sort of proceeding which would take them out of rule 5. That is our point plainly and simply.

The Court: A contempt proceeding without making any written order at all, just tell the clerk to enter a minute order that I find a man personally in contempt, fine him so much money and something like that.

Mr. Naylor: I think it depends on the nature of the contempt. If it were a court room contempt, I don't think there is any question, Your Honor would enter a minute order, but here in the matter, actually here it is in the nature of a supplemental proceeding, that is in the nature of a supplemental pleadings, and as a matter of fact Mr. Hursh has referred to the fact they prayed for something more than contempt, namely, a supplement of Your Honor's original judgment. You remember that point was discussed.

The Court: Yes, I think I refused to give it.

Mr. Naylor: That is true, that is true, but I think the refusal was in the matter of form, but not substance.

The Court: Was an appeal taken from the original judgment?

Mr. Naylor: No, it was not, and the reason there was that we felt that we had a clear definition in Your Honor's judgment based on findings and conclusions in the early antecedent proceedings as to what was a permissible course of conduct, and there Your Honor indicated that you had a certain definite intent. I remember that expression being used in the contempt proceedings, and there we misinterpreted Your Honor's intent there with respect to the type of marking that was to be put on these articles.

But I think this is not a question of any extension of the time for appeal, I think it is clarification of that which was entered on the clerk's docket as of July 31 where at least three different sources had a different interpretation than Your Honor now declares. Of course, the finality, the one of intent, that is now the matter that is raised.

The Court: I will look into the authorities on the thing. I would like to relieve you, but if you think, and the matter depends on what my intent was originally, then really I am stultifying myself and reversing and changing my intent by——

Mr. Naylor: I appreciate Your Honor's position in that regard, but I do say this:——

The Court: Intended to enter a judgment as I did, as I thought I did. The mere fact that it was a memorandum, or marked memorandum of opinion doesn't seem to me it ought to change the effect on the docket. A rose by any other name would smell

as sweet. I say I order this and I order that. I woud like, however, to relieve you, particularly if it is going to be an out of the pocket cost to you, but I know how lawyers feel about that—I was a lawyer myself.

Mr. Naylor: I mentioned it because I knew Your Honor would appreciate our position here. We feel that we should take that responsibility.

Mr. Hursh: I don't understand what Mr. Naylor is saying, he doesn't want to appeal, because if there was any appeal from that it would be on behalf of the plaintiff, he wants an interpretation of Your Honor's first opinion.

Mr. Naylor: No, the findings, clarification of those.

The Court: He feels that the decision made on the contempt proceedings constituted a broadening of the judgment and therefore he would like to appeal from it to get the proper construction from the other court.

Mr. Naylor: That is it precisely.

The Court: In other words, as I understand Mr. Naylor, they misconstrued the language of that opinion and of those findings upon which the original judgment was based.

Mr. Hursh: I mean——

The Court: That they did not construe them the way I did and therefore they were willing to get a clarification from the order that I made, that I made in the contempt proceedings. That is the primary proposition.

Mr. Hursh: We naturally thought Your Honor's original memorandum opinion was clear, that defendant was not to use the name "Steccone" unless it was pointed out it was not in connection with the Morse-Starrett Products Co. That is exactly what he violated and the court's original memorandum opinion and the judgment—those he used many, many times, because the exhibits that we presented to Your Honor in the contempt proceedings, the name Steccone was used without any qualifying statement to show where those products originated.

The Court: Well, I am just clarifying to you——

Mr. Hursh: Yes, Your Honor.

The Court: ——Mr. Naylor's point of view.

Mr. Neil: May I say something at this juncture? It seems to me that Your Honor is laying rather considerable stress on the word "intent" and I would like to clarify that particular word in its meaning. In this problem of determining whether there was a final decision, I think that intent should be determined objectively. In other words, whether there was a final decision or not is a matter of substance and not form and the intent of the judge is important, but that intent is to be determined or gathered from the record as a whole, illumined by local practice and thus objectively determined rather than, perhaps, subjectively. Just offered to mention that.

The Court: I see what you mean. I will review these documents.

Certificate of Reporter

I, Official Reporter, and Official Reporter pro tem, certify that the foregoing transcript of 27 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ RUSSELL D. NORTON.

[Endorsed]: Filed Dec. 13, 1950.

[Title of District Court and Cause.]

NOTICE

To: Messrs. Mellin, Hanscom & Hursh, Attorneys, 79 Post Street, San Francisco, Calif.
Mr. I. M. Peckham, Attorney, 405 Montgomery, San Francisco, Calif.
Messrs. Naylor & Lassagne, Attorneys, 420 Russ Building, San Francisco, Calif.

You Are Hereby Notified that on November 9, 1950, Judge Herbert W. Erskine denied the defendant's motions to recall, quash or stay writ of execution and for entry of final judgment, in the captioned case.

C. W. CALBREATH,
Clerk, U. S. District Court.
mpb

San Francisco, California,
Nov. 10, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that Ettore G. Steccone, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the denial of defendant's motions to recall, quash or stay writ of execution and for entry of final judgment, said denial having been entered in this action on the 10th day of November, 1950.

NAYLOR AND LASSAGNE,

By /s/ JAS. M. NAYLOR,
Attorneys for Defendant.

[Endorsed]: Filed Nov. 13, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Appellant designates the following portions of the record, proceedings and evidence to be contained in the record on appeal:

1. The judgment filed on January 11, 1950, in the original proceeding between these parties.

2. Petition for Order to show cause, filed July 20, 1950.

3. Order to show cause, filed July 20, 1950.

4. Affidavit of Ettore G. Steccone in opposition to Order to Show Cause.

5. Affidavit of E. P. Gilsdorf on Order to Show Cause.

6. Memorandum Opinion dated July 31, 1950.

7. Copy of Civil Docket page showing history of Civil Action 27081 subsequent to original judgment.

8. Order for writ of execution.

9. Defendant's motion to recall, quash or stay writ of execution, and for entry of final judgment.

10. Transcript of hearing on defendant's motion.

11. Notice of denial of defendant's motion.

Dated: November 15, 1950.

NAYLOR and LASSAGNE.

By /s/ JAS. M. NAYLOR,
Attorneys for Defendant.

[Endorsed]: Filed November 17, 1950.

[Title of District Court and Cause.]

APPELLEE'S COUNTER-DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Appellee designates the following additional portions of the record, proceedings and evidence to be contained in the record on appeal:

(1) Findings of Fact and Conclusions of Law.

(2) Affidavit of Leon Paul dated July 19, 1950.

(3) Transcript of Hearing on Order to Show Cause.

(4) Appellee's Counter-Designation of Contents of Record on Appeal.

Dated: December 26, 1950.

MELLIN, HANSCOM & HURSH.

By /s/ JACK E. HURSH,
Attorneys for Plaintiff.

Receipt of Copy Acknowledged.

[Endorsed]: Filed December 27, 1950.

[Title of District Court and Cause.]

DOCKET ENTRIES

1950	(No.)	
Jan.	11—54	Filed Findings of Fact and Conclusions of Law. (Erskine)
Jan.	11—55	Filed Judgment, Pltff. owner of trade name "Steccone" dismissing cross-complaint, writ of injunction to issue v. deft. and plaintiff to recover costs. Execution awarded. (Erskine)
Jan.	11—	Ord. findings of fact, conclusions of law and judgment entered in favor of Pltff. vs. deft. for injunction. (Erskine)
Jan.	12—	Mailed notices.

1950 (No.)

Jan. 13—56 Filed notice of taxing costs Jan. 17, 1950, 9:30 a.m.

Jan. 13—57 Filed cost bill by plaintiff. ($138.00)

Jan. 17— Taxed costs at $138.00, 9:40 a.m.

Mar. 17—58 Filed satisfaction of judgment by plaintiff.

July 20—59 Filed petition of pltff. for order to show cause.

July 20—60 Filed affidavit of Leon Paul in support of petition for order to show cause.

July 20—61 Filed Order to show cause v. deft. for hearing July 26, 1950 at 10:00 a.m. (Erskine)

July 22—62 Filed copy order to show cause, executed July 20, 1950.

July 26— Hearing on order to show cause. Arguments heard, and cause submitted. (Erksine)

July 26—63 Filed deft's; points and authorities in opposition to order to show cause.

July 26—64 Filed affidavit of Gilsdorf.

July 26—65 Filed affidavit of Steccone.

July 31— Ord. deft. cease and desist from circularizing cert. printed circulars and manufacturing and selling improperly marked squeegees and handles and pay to pltff's. atty. $500.00 atty. fees. (Erskine)

1950 (No.)

July 31—66 Filed memo. opinion of court that deft. cease and desist from circularizing certain printed circulars; mfg. and selling improperly marked squeegees and handles and pay pltff's atty. $500.00. (Erskine)

Aug. 1— Mailed copies of opinion to counsel.

Sept. 11—67 Filed reporter's transcript of proceedings of July 26, 1950.

Oct. 6—68 Filed order for writ of execution. (Erskine)

Oct. 6— Issued execution.

Oct. 9— Filed motion and notice by deft. to set aside execution and for stay of judgment, Oct. 13, 1950, before Erskine, with memo., of points and authorities and order shortening time. (Roche)

Oct. 9— Lodged findings and conclusions.

Oct. 9— Lodged judgment.

Oct. 12— Ord. motion to recall, quash, stay execution and for entry of judgment cont'd to Oct. 24, 1950. (Erksine)

Oct. 12—70 Filed stip. and ord. cont. hearing on motions to recall, quash or stay and for entry of judgment to Oct. 24, 1950. (Erksine)

Oct. 16—71 Filed ack. of service of motion, order and memo.

Oct. 23—72 Filed memo. of points and authorities in opposition to motion for entry of final judgment.

1950 (No.)

Oct. 24—	Hearing. Ord. motions of deft. to recall, quash and stay execution heretofore issued herein and for entry of judgment of contempt be submitted for consideration and decision. (Erskine)
Nov. 9—	Ord. motions to recall writ of execution and for entry of final judgment, each denied. (Erskine)
Nov. 10—	Mailed notices.
Nov. 13—73	Filed notice of appeal by deft. 5.00
Nov. 13—74	Filed order granting suersedeas in sum $750.00. (Erskine)
Nov. 14—	Mailed notices.
Nov. 17—75	Filed supersedeas bond in sum $750.00. "Approved, Herbert W. Erskine, U. S. District Judge."
Nov. 17—76	Filed appellant's designation of record on appeal.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court in the above-entitled case,

and that they constitute the Record on Appeal herein, as designated by the Attorneys for the Appellant, and I further certify that there is included a copy of certain entries from the Civil Docket relating to this case, to wit:

Judgment

Petition for Order to Show Cause Including Exhibits 1, 2, 3, 4 & 5

Order to Show Cause

Affidavit of E. P. Gilsdorf on Order to Show Cause

Affidavit of Ettore G. Steccone in Opposition to Order to Show Cause—Including Exhibits A, B, C, D, E & F

Memorandum Opinion

Order for Writ of Execution

Motions and Notice of Motions to Recall, Quash or Stay Writ of Execution, and for Entry of Final Judgment

Notice of Denial of Defendant's Motions

Notice of Appeal

Designation of Contents of Record on Appeal

Copy of docket entries from the Civil Docket showing history of this action subsequent to original judgment—from January 11, 1950, to date.

Reporter's Transcript for October 23, 1950—Motion to Recall, Quash or Stay Writ of Execution, and for Entry of Final Judgment.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at

San Francisco, California, this 14th day of December, A.D. 1950.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Supplemental Record on Appeal herein, as designated by the Plaintiff, to wit:

Findings of Fact and Conclusions of Law

Affidavit of Leon Paul

Reporter's Transcript for July 26, 1950

Appellee's Counter-Designation of Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at

San Francisco, California, this 29th day of December, A.D. 1950.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12770. United States Court of Appeals for the Ninth Circuit. Ettore G. Steccone, an individual doing business under the firm name and style of Steccone Products Co., Appellant, vs. Morse-Starrett Products Co., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 29, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit
Appeal No. 12770

ETTORE G. STECCONE, an Individual Doing Business Under the Firm Name and Style of STECCONE PRODUCTS CO.,

Appellant,

vs.

MORSE-STARRETT PRODUCTS CO., a Corporation,

Appellee.

NOTICE OF MOTION

To Ettore G. Steccone, appellant, and to Naylor & Lassagne, his attorneys:

You and Each of You Will Please Take Notice that appellee will bring on for hearing before the Honorable United States Court of Appeals for the Ninth Circuit, its Motion to Dismiss Appeal on the 19th day of February, 1951, at the chambers of said Court, Post Office Building, Seventh and Mission Streets, San Francisco, California, at the hour of 10:00 a.m., or as soon thereafter as counsel can be heard.

MELLIN, HANSCOM & HURSH,

By /s/ JACK E. HURSH,
Attorneys for Appellee.

Receipt of Copy acknowledged.
[Endorsed]: Filed Feb. 13, 1951.

[Title of Court of Appeals and Cause.]

MOTION TO DISMISS APPEAL

Comes Now Appellee Morse-Starrett Products Co. and Moves to dismiss this appeal. The grounds on which this motion is based are as follows:

1. From the face of the Statement of Points filed by appellant, this Court has no jurisdiction.

2. Notwithstanding the Statement of Points on which appellant intends to rely on appeal, this Court has no jurisdiction of this appeal because a Final Order was entered in the District Court on July 31, 1950; said Final Order was an appealable order and appellant failed to file a Notice of Appeal within the time set forth for such notice in the Federal Rules of Civil Procedure.

MELLIN, HANSCOM & HURSH,

By /s/ JACK E. HURSH,
Attorneys for Appellee.

Receipt of Copy acknowledged.

[Endorsed]: Filed Feb. 13, 1951.

[Title of Court of Appeals and Cause.]

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Appellee's Motion to Dismiss this appeal should be summarily denied by this Court. If appellee's motion is truly a motion to dismiss, then the motion is totally unsupported by any authority cited in appellee's brief. On the other hand, if the authorities cited by the appellee are germane to the issues which appellee seeks to bring before this Court, then the motion to dismiss is miscaptioned and appellee's brief is premature in that it is directed to the merits of the appeal which will be considered by this Court after the motion to dismiss, so-called, has been denied.

The sole issue which should have been presented for the Court's consideration by appellee's Motion to Dismiss is whether the District Court's order of November 9th, 1950, denying appellant's Motions to Recall, Quash or Stay Writ of Execution and for Entry of Final Judgment was a "final decision" within 28 U.S.C. Sec. 1291, but this issue is nowhere presented for the Court's attention in appellee's brief in support of its motion, and in fact appellee heavily relies upon an authority which is considered by the appellant to be dispositive of appellee's Motion to Dismiss, i.e., the authority, In re Forstner Chain Corporation, 177 Fed. (2d) 572, plainly indi-

cates that a denial of appellee's Motion to Dismiss is in order.

* * *

Respectfully submitted,

NAYLOR and LASSAGNE,

JAS. M. NAYLOR,

By /s/ JAS. M. NAYLOR,

Attorneys for Appellant.

Service acknowledged.

[Endorsed]: Filed Feb. 17, 1951.